

U. S. G. 89/2: In 8/17

# IRS DISCLOSURE

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON  
ADMINISTRATIVE PRACTICE AND PROCEDURE  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
NINETY-THIRD CONGRESS  
SECOND SESSION  
ON  
INFORMATION DISCLOSURE POLICIES AND PRACTICES  
OF THE IRS

APRIL 1 AND JULY 31, 1974

Printed for the use of the Committee on the Judiciary



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# FREEDOM OF INFORMATION: IRS

MONDAY, APRIL 1, 1974

U.S. SENATE,  
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND  
PROCEDURE OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2228, Dirksen Office Building, Senator Edward M. Kennedy, chairman of the subcommittee, presiding.

Present: Senators Kennedy (presiding) and Thurmond.

Also present: Thomas M. Susman, counsel and Ann Phillippi, staff assistant.

Senator KENNEDY. The committee will come to order.

Every American used to believe in the old adage that no matter who you were or who you knew, only two things in life were inevitable—death and taxes. Many are no longer so sure about taxes. They are now convinced that a few—individuals with rich and powerful friends and corporations who buy political clout with campaign contributions—have found a way to escape the April 15 reaper.

Certainly it is true that the compliance of Americans with their tax laws has always been the envy of the free world. It is equally true that the reason they comply is because they believe that our system of taxation is founded upon fair, uniform and even-handed enforcement of the law.

Yet when we fill out our form 1040 this year, it is hard not to think of individuals earning hundreds of thousands of dollars who escape Federal tax liability completely; of oil companies with soaring profits who pay only 6 percent of their income in taxes, while workers pay more than triple that amount; and of a vast number of corporations who obtain special treatment under the tax laws.

We also think about White House plans to use tax audits to harass political enemies; of White House plans to obtain embarrassing personal information from tax files; of White House plans to revoke tax exemptions for public interest organizations; and of White House plans to secure special treatment for friends. And we think about the allegations that the President himself may have avoided paying his lawful share of his own tax bill.

Our system of self-assessment, backed by the full weight of the law whenever necessary, has produced a greater degree of voluntary compliance than the tax system of any other free people. But it is little wonder these days that, when Archie Bunker's daughter catches him cheating on his tax return, he replies, "I'm just, what do you call it, exercising my loopholes, that's all. Like the big guys." Last year a Harris poll found 60 percent of those surveyed in sympathy with

Archie's "taxpayer revolt"—a revolt most directly affecting both the financial soundness of our Government and the institutional soundness of the Internal Revenue Service.

There is probably no agency of the Government which impinges more directly on the lives of more people than the IRS. Employing more than 68,000 men and women throughout the Nation, using one of the world's largest and most sophisticated computer systems, overseeing the filing of almost 117 million tax returns, the IRS resembles Orwell's Big Brother all too closely. Each year the IRS audits almost 2 million returns, handles around 50,000 administrative and court cases, and issues over 30,000 rulings.

In requiring all taxpayers to report and pay the correct amount of taxes, the Internal Revenue Service demands that each of us lay bare to the Government many of the most confidential facts of our lives. These facts are used by the IRS to measure the accuracy and honesty of our compliance with the law.

The Internal Revenue Service is guardian of our tax system, adviser to taxpayers, and policeman for our tax laws. Our hearings today will begin to examine the extent to which the IRS complies with the law—the Freedom of Information Act, which guarantees to every American the right to know what his Government is doing.

At this time of the year, when the IRS is asking all taxpayers to provide confidential and personal information for tax collection purposes, it is appropriate for us to ask how fully and fairly the IRS is complying with its own obligation to supply the American people with information on its operations, its practices, and its procedures.

Our tax program must be a two-way street. The IRS should expect taxpayers to comply fully with the enormous burdens placed on them by the tax laws. But taxpayers have an equal right to demand compliance by the IRS with requirements of the Freedom of Information Act.

Thomas Jefferson said it best:

If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.

Maximum public disclosure by the IRS of all its activities and decisions is necessary to secure and retain the trust and confidence of the public. Each taxpayer must know that he has been treated fairly. He must know that he has been treated the same as his neighbors, the same as his elected officials, and the same as the friends of those officials.

In 1967 the Attorney General explained the purpose of the Freedom of Information Act in these words:

If the government is to be truly of, by, and for the people, the people must know in detail the activities of the government. Nothing so diminishes democracy as secrecy . . . Beginning July 4, a most appropriate day, every executive agency, by direction of Congress, shall meet in spirit as well as practice the obligations of the Freedom of Information Act.

Only if the Internal Revenue Service opens to public view its guidelines, rulings, and manuals can the taxpayer know what his rights are, what his obligations are, and whether he is being treated fairly and equitably.

Only if the IRS discloses its reports, its statistics, and its studies can the taxpayer find out how the tax laws are working, and whether the system is being administered uniformly and even-handedly.

Only if the IRS opens its deliberations, its decisionmaking, and its decisions can the taxpayer be confident that this vital institution of Government is free from improper influence.

We intend this morning to begin an inquiry into the extent to which the Internal Revenue Service, in the almost 7 years since the Freedom of Information Act became effective, has complied with both the letter and the spirit of the law.

I think we all recognize that the tax laws are voluminous and complex, that the professional staff at the IRS consists of some of the most able, independent men and women in our Government, and that Congress has continued to multiply the laws that the IRS is responsible for administering—most recently the wage and price controls—without correspondingly increasing the agency's manpower. Certainly Congress shares much responsibility for creating the loopholes and ambiguities in the laws that guide the IRS. Nonetheless, the public information law contains no exemptions for overworked officials, complicated issues, or controversial materials. And it is the implementation of this law that concerns us today.

We have four witnesses in our hearing this morning: Mr. Mortimer Caplin, Mr. and Mrs. Philip Long, and Mr. Tom Field. Representatives from the Internal Revenue Service will be called to testify at some subsequent date. So that we can maximize the discussion given as to Internal Revenue Service practices we have asked all of them to appear in the panel together. We will hear testimony from each separately but we will give each individual an opportunity to comment on the other statements and observations.

Our first witness will be Mortimer Caplin, currently practicing law in Washington, D.C. Mr. Caplin was a tax lawyer practitioner and a professor of taxes and in fact my professor of taxes at the University of Virginia Law School. In 1961 he was named Commissioner of the Internal Revenue Service by President Kennedy and served in that post until 1964 when he returned to the practice of law. He has been an old and dear and longtime friend who is always willing to come up and appear before congressional hearings. All of us benefit from such appearances, and we welcome your appearance this morning.

We notice you have your son here as well, who is following in the traditions of the legal profession of his father. We want to welcome him too.

#### STATEMENT OF MORTIMER CAPLIN, FORMER COMMISSIONER OF INTERNAL REVENUE SERVICE, WASHINGTON, D.C.

Mr. CAPLIN. Thank you very much. It is a privilege to appear before your subcommittee to testify on the administration of the Freedom of Information Act by the Internal Revenue Service.

The act has been a most welcome development for all administrative agencies. Nevertheless, I believe that no agency stands to benefit more from a general "free information" policy than the Internal Revenue

Service. In recent years my law firm and I have made use of the act and materials disclosed by the Revenue Service under the act. We believe the act has made a salutary difference in the administration of the tax laws and in general taxpayer response to them.

#### NATURE OF OUR TAX SYSTEM

Our tax system, as you have pointed out, is largely dependent upon the voluntary compliance of our citizens—and over 97 percent of what we collect each year as a nation comes from what they report themselves and then what they assess themselves for.

In turn, this outstanding record of compliance could not have been maintained if the Revenue Service had not succeeded in conveying a general impression that the tax system is administered fairly and equitably for all taxpayers—be they large corporations or individuals, Iowa farmers or New York stockbrokers.

Obviously such an extensive and complex system cannot always operate with perfect consistency and equality of treatment. When each year close to 2 million income tax returns are examined by some 13,000 revenue agents and 3,500 tax technicians—each a different human being, each with different abilities—something is sure to go wrong on occasion. But evenhandedness and equality of treatment should always remain the system's objective. And to the extent that this objective is not made perfectly clear to the public, we may expect public confidence in the system to waver, with adverse consequences for everyone.

When these points are considered, it is clear that the Freedom of Information Act is not a threat to our tax system, but a positive aid. In effect, the act encourages the Revenue Service to search continuously for areas of disclosure and to come forward with a flow of information of interest to taxpayers. The Service has always had great concern over whether it has the authority to disclose certain information. I think that the Freedom of Information Act really took away this veil and gave the service an opportunity to reach forward to the public.

Most of the information sought under the act concerns the Service's views of the tax laws and the means by which taxpayers may bring themselves into compliance with these laws. The Service should be glad to share this information with the public, and to use the opportunity offered by the act to enhance public knowledge and confidence in its activities.

#### REASONS FOR IRS NON-DISCLOSURE

I am aware of reasons why the Service might be reluctant to divulge some types of information. For example, there is clearly a need to protect from public scrutiny the internal decisionmaking process, that is, the "consultative functions" of government—"the advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." Policies cannot be formulated and evaluated in a "fishbowl," and decisionmaking would be stultified if every policy recommendation by subordinate to chief had to be disclosed. This would ill serve the public interest. Similarly, the Service has an obvious interest in refusing to disclose the fruits of certain ongoing investigations, particularly

criminal investigations, before decisions on the results of these investigations are reached. Premature disclosure in these matters prejudice the Service's or the taxpayer's case in court.

I mention these areas because they are clearly candidates for non-disclosure—areas in which the much cited “secrecy” policy of the Internal Revenue Service is, in my judgment, well founded. Significantly, both of these areas are covered by specific exceptions in the Freedom of Information Act. It is important to recognize that the act is not solely a disclosure statute. It strikes a balance between the legitimate needs of Government agencies for nondisclosure—which include the legitimate needs of the public for protection of privacy—on the one hand and the interest of the public in knowing how and why the agencies do things as they do, on the other. In my view, the act achieves a balance that is both sensible and workable.

It may be asked why—if the most fundamental interests of the Internal Revenue Service are in achieving maximum public confidence through maximum disclosure—why the Revenue Service did not respond to the Freedom of Information Act with open arms; and why it has required 7 years since the act's passage and a host of litigations to achieve the disclosure that has been made to date. The reason for the Service's reaction is not hard to find. Nor is it sinister or to the discredit of the Service.

Historically—and this is true of all agencies—the instincts of most administrative agencies have been to shield as much of their operations as possible from the public view. This is not for the purpose of hiding wrongdoing. On the contrary, nondisclosure is often seen by agencies as conducive to the most efficient rendering of their public service mandate:

Avoiding disclosure permits an agency to keep its options open.

Not having committed itself publicly, the agency may respond more flexibly to developing factual situations.

Avoiding disclosure permits an easier administrative task: The agency can act more rapidly and more boldly when its attention is not partially distracted by eyes peering over its shoulder.

Senator KENNEDY. Isn't there really a countervailing application that by having greater disclosure, alternative recommendations or observations and suggestions may be considered in the decisionmaking process?

Mr. CAPLIN. I would agree with you entirely.

Senator KENNEDY. And doesn't it also bring the disinfecting factor of sunlight and openness to these decisionmakings and perhaps avoid any potential threat of improper influence? Aren't there arguments on both sides?

Mr. CAPLIN. Senator, yes exactly. In this aspect of my testimony, I was marshalling what I would argue as the traditional arguments that the administrative agencies I make to support nondisclosure: that is, “Leave us alone, we are honest men, we are good men, and we can do our job more efficiently if we do not have to cast full public light on all our operations.”

I think that most of our administrators truly believe that and I think they are trying to do a good job. But we realize that administrators are human and that serious errors do occur. Unfortunately

we have seen of late that serious errors do occur. Unfortunately we have seen of late that serious improprieties may also occur.

I think it is contrary to our American system to place that much power in any individual organization without the genius of the checks and balances that are built into our system of government.

#### NEED FOR DISCLOSURE

And this I feel is really at the very bottom of the Freedom of Information Act. If we as a Nation were prepared to presume conclusively that all agencies would invariably act in the public interest with the spirit of fairness to all, then these agency arguments that I have mentioned might seem very weighty indeed. But we are not prepared to indulge in such an irrebuttable presumption. Indeed, the very strong traditions of the United States are contrary to it. We require accountability of our public officials, and anyone who assumes office must accept that accountability and our Constitution and statutes the healthy public interest—which our Constitution and Statutes encourage—in knowing how officials and agencies are fulfilling their public responsibilities. It is therefore clear that at least some agency reasons for wishing not to disclose information must yield to a superior and countervailing interest—the interest in maintaining public confidence in agency operations.

Nowhere are these generalities more fitting than in the case of the Internal Revenue Service and at no time more than the present. We have seen growing over many months now a deep crisis affecting Government in general, many of whose roots may be traced to clandestine operations by administrative agencies in conjunction with the executive branch of Government. The Internal Revenue Service, which has unfortunately shared some of the adverse publicity, must be particularly sensitive to these developments because its task cuts across the fabric of our entire society and requires it to deal with Americans at every level of business, investment and employment. And—much more so than with most other agencies—a spirit of mutual confidence is crucial in all of these dealings.

#### EVALUATION OF IRS PERFORMANCE

How, then, has the Internal Revenue Service gone about the task of implementing the Freedom of Information Act in the almost 7 years since the act became effective in July of 1967? From my perspective it appears that compliance began rather slowly and stubbornly but that, in several areas, it has picked up momentum and offers promise for the future.

Senator KENNEDY. Now in their statements Mr. and Mrs. Long observe, "Irrespective of a growing number of unfavorable court decisions against the Internal Revenue Service, officials' attitudes remain slightly changed" and Mr. Field points out, "Service compliance with the dictates of the courts have been slow and incomplete;" and he also says: "The Service seems to be digging in its heels and resisting further disclosure of any sort."

Now I am wondering if, as we go through this morning, we could determine whether perhaps the Internal Revenue Service responds one



way to your firm's interests because of its long-time tradition in tax law and its degree of competence and awareness, and deals with you perhaps differently than someone like the Longs and Mr. Field? Do you, perhaps get a little better service than they do, given the fact that they know that you know the law and the decisions in these areas?

Mr. CAPLIN. Well I think that one might reach that conclusion. In approaching the Internal Revenue Service we certainly come well prepared. We study the statutes, the regulations, the cases, and we try to take responsible positions and push real hard where we think we are right, but believe me we have not had an easy time of it. I do not want you to think, merely because I express a certain hope and optimism for the future, that our own experience has been easy and simple. Actually we have had one case it took one full year, despite our knowledge and despite our submission of briefs to get a final response. More recently the picture appears better because on another occasion we obtained a response after only a few months. But I should add that in both cases we did not obtain a wholly favorable result administratively and we had found it necessary to be involved in additional disputes. In one case, *Center on Corporate Responsibility v. Schultz and Alexander*, which is related to the Freedom of Information Act, we had to go to court to get the results that we were seeking. I am very happy to add that the court saw—

Senator KENNEDY. Saw your wisdom?

Mr. CAPLIN. Saw the wisdom of our viewpoint.

Senator KENNEDY. Let me just before continuing ask Mr. and Mrs. Long and Mr. Field for a brief comment on that particular point.

Mr. LONG. From our experience we have found when you start out knowing practically nothing about tax law—and we started out as pro se people and I would say that I knew less about taxes as far as the administrative end and the audit compliance end of it than anyone—I think that the ordinary Joe Blow person is in a very unfavorable position in regards to dealing with the audit compliance end of the Internal Revenue Service compared with a law firm that has substantial skills and knowledge and connections with the Service.

Mrs. LONG. I might add that—

Senator KENNEDY. Does this include the Freedom of Information requests?

Mrs. LONG. Yes, I think very definitely. And one thing that we must comment on is that really today we are much less optimistic about the Service's compliance with the act than we were a year ago. We notice a real hardening of attitudes where we can no longer get that which was furnished 1 year ago.

Senator KENNEDY. But you will develop that point later on?

Mrs. LONG. Yes.

Senator KENNEDY. Mr. Field, just a brief observation.

Mr. FIELD. I think the thing that is most worrisome to us is the broadening of the Internal Revenue Service's regulations relating to the definition of the term "tax return". Those regulations were brought about 2 years ago without notice of rulemaking or opportunity for public comment so as to arguably sweep within the protections that we accord to individual income tax returns and corporate tax returns any document within the hands of the Internal Revenue Service.

Now I will discuss that regulation a little bit more in my own statement, but I think that development may account for some of the hardening of position, which Sue Long just mentioned.

Mr. CAPLIN. I might add, Senator, that these laws and regulations are administered by human beings and it is not always clear who happened to be focusing on the particular problem. I have known Commissioner Alexander as a practitioner for many years and I have a great deal of confidence in him. I do not know how much he has focused on this area. He has so many things to pass upon each day, and perhaps when he appears before this committee, he will have an opportunity to explain his attitudes. We are here faced with the old squeaky door principle. The Commissioner has hundreds of things to do, and the question is always presented on what he will look at. And I think that perhaps it is time that he gave a real hard look at this whole Freedom of Information Act area.

I should say that beyond the general statements I have made about the Service's attitude—and I have listed in my formal statement some of the things the Service has done over the years—it is very difficult to know how the Service is actually performing. Actual day-to-day practice under the Service's regulations is a matter of considerable interest to the public and to this committee, and, yet it is extremely difficult for any private individual or organization to get good hard facts sufficient to make a meaningful evaluation. The Service does give statistical data to certain committees, but I think it is more important—and perhaps this subcommittee will look into this—more important to call upon the Service not only to provide up to date statistical data but to obtain a qualitative report and to get them to evaluate how well they are complying with the mandate of the act. This is a very important area and I think it would help the whole issue of public confidence if a qualitative report were laid on the table.

#### AREAS OF RESISTANCE TO DISCLOSURE

There are at least six major areas where the Service is today resisting disclosure: First, private letter rulings, which are written statements to taxpayers from the national office on a proposed transaction and which are for all practical purposes an insurance policy to anyone who receives such a ruling.

Secondly, technical advice memoranda and transmittal memoranda, which are also written statements from the national office. In this instance they are given to the district director at the initiative of an examining revenue agent or a taxpayer under audit, and they provide advice and guidance on the interpretation of the tax law under a given set of facts. At issue here is a completed transaction: under the private ruling procedure, it is generally a prospective transaction.

Third, items called actions on decisions, which are legal memoranda prepared by the Chief Counsel of the Internal Revenue Service interpreting court decisions which are adverse and expressing a Government position indicating how they regard that decision insofar as precedential value is concerned.

Senator KENNEDY. Now your law firm is involved in trying to gain some access?

Mr. CAPLIN. Not necessarily on all of these items.

Senator KENNEDY. But on No. 3, on actions on decisions?

MR. CAPLIN. I do not know really whether we have taken a position on that.

Senator KENNEDY. As I understand the actions on decisions, if there is a court ruling, say in the Fifth Circuit about the handling of campaign contributions, for example, the Internal Revenue Service can really make a decision that they will abide by that decision in the Fifth Circuit, but in no other circuit. So you get a situation where within a certain jurisdiction this is the law, and then in another circuit, as far as the Internal Revenue Service is concerned, it is not the law. So, you have a rather obvious inconsistency here.

I am not going to say who is right or who is wrong, but isn't that the way a situation could develop?

But if you had a publication of that decision, at least you would have a public awareness of this inconsistency. The people who live in the states within the Fifth Circuit could then go out and make their campaign contribution if they wanted to, but those in another jurisdiction couldn't, because they would know that is illegal. At least as far as public information wouldn't it be useful for them to have disclosed the action on that decision?

MR. CAPLIN. The action on decision is in the nature of the Revenue Service's evaluation of a particular case. They do not feel that they are really bound until the U.S. Supreme Court takes action on the issues that are involved. It is true that the IRS may have this adverse Fifth Circuit opinion, and they may feel that they are going to keep on litigating the issues in other jurisdictions—let us say in the Fourth Circuit and the Second Circuit. If they can obtain a favorable decision, and thereby create a conflict, they can then take it to the Supreme Court.

Senator KENNEDY. And the courts recognize the authority of the Internal Revenue Service to do this?

MR. CAPLIN. That is right. You know, the Service is a nationwide organization and the mere fact that one U.S. court of appeals might reach a given result or the Tax Court of the United States or a district court, does not mean that the Service is going to follow that decision with respect to all the 80 million individual tax returns. But the action on decision would tell you what their attitude is, whether they think the decision is right or not. Sometimes they say they are going to accede and to accept the unfavorable decision. In the case of Tax Court decisions, they sometimes publish something known as an "acquiescence" which says that they will accept a particular decision as binding—based upon its particular facts; and usually that is a Tax Court decision.

Beyond the areas I have mentioned there are certain comments on proposed regulations, which the person who submits in writing asks to be held confidential. That is another area where the people are saying why should they be able to submit confidential information of that sort which isn't known to the public.

There are also something known as General Counsel's memorandums which are written analyses of legal issues prepared by the Chief Counsel's office.

Finally, there are aspects of the Internal Revenue manual which have not yet been made public and there are disputes over whether

parts relating to tolerance and criteria guidelines for Internal Revenue Service personnel on selection of returns and issues for audits should be made public.

The Longs, I know, have a very strong interest in this.

I would like to comment on two things, primarily the first point which has to do with private rules, which is a very sensitive issue and then briefly on the issue of portions of the manual not yet disclosed.

#### PRIVATE LETTER RULINGS

Now the private rulings issue is the most pressing matter that the Revenue Service has in this area right now. They are in litigation. They lost a very important case. Mr. Field has been closely involved with it, and that case is known as the *Tax Analysts* decision.\* This case is now on appeal.

People frequently criticize the Revenue Service on audits. They forget the significance of private rulings. And I think this is very, very important to appreciate the crucial nature of private rulings in our entire Internal Revenue Service process. There is not a major transaction today culminated in this country without at least serious consideration to getting a ruling and most of the big transactions do involve these private rules.

You apply to the Internal Revenue Service in Washington on your given statement of fact and you say that based upon these facts, we think that such result should occur. This is the taxpayer or his counsel. And you ask the Internal Revenue Service then in essence to confirm your conclusions.

If you get that piece of paper, you have for all practical purposes an insurance policy providing two things: one, that you have made a fair and reasonable disclosure, and two, that you have followed the transaction, after you got that ruling, in the manner in which it is set forth.

If you don't make an adequate disclosure or if you deviate from the facts, the ruling isn't worth the piece of paper it is written on. This ruling is normally given to you and you file it with your returns and you tell the agent, "Look Mr. Agent, the national office told me what the results are so don't you bother me." However, the agent is obliged and he should at least check out the transaction to see if you did what you said you did and that you didn't mislead the national office.

The national office does not audit you when you come for that ruling. They accept what you say on good faith. This is where the question of honesty and fair dealing is very important from the standpoint of the taxpayer.

Last year there were some 30,000 rules issued and 14,000 what I would call hardcore rules on income tax transactions, excess tax, some exempt organizations, and a number of technical issues and also about 16,000 were more routine although with a lot of dollar value on changes of accounting methods and accounting. And what we call determinations of earnings and profits.

Contrast that with 617 published revenue procedures and published revenue rulings, which were put into the Internal Revenue Bulletin

\**Tax Analysts & Advocates v. IRS*, 362 F. Supp. 1298 (D.D.C. 1973), aff'd—F.2d—(D.C. Cir. 1974).

on a biweekly basis and which describe to the taxpayer generally his rights and obligations. So you have 617 published and 30,000 unpublished.

Taxpayers want to know about those rules and see if they can have some benefit of them. They want to know, well, what is the Internal Revenue Service's interpretive position, what are they thinking about, how are they interpreting the law, could I get such a ruling if I went for that and had a transaction like that, can I shape a transaction so that I fit within that ruling's policy. And frequently there are a number of alternative ways of approaching a transaction, Senator, you purchase assets, you go through a cashing, you go through a merger, you have an exchange of stock to get a tax free result. So there are a whole series of ways that one can achieve this. And he may find that the Internal Revenue Service, like in a well publicized case recently permitted a tax ruling to be issued on a rather unusual set of circumstances of great surprise to many members of the bar.

Senator KENNEDY. Are you referring to the ITT case?

Mr. CAPLIN. Well, that is the name that has been associated with it.

I think that the availability of these rulings would, No. 1, restore confidence in people that nothing is being shoved under the rug, that there is fair treatment to all taxpayers on an equal basis, and No. 2, that we have access to that information, that there is no secret law being passed about. And incidentally within the tax bar there is frequently interchange of private rulings. There shouldn't be any special body of citizens which has special knowledge of this tax law that is really being developed on an administrative basis.

In Mr. Field's case, *Tax Analysts and Advocates*, which is a leading freedom of information decision on private rulings, the U.S. District Court for the District of Columbia held that rulings were interpretations of the law within the meaning of section (a) (2) (B) of the act and must be made public. And the court added such rules have come to constitute a body of "private law" frequently disseminated among members of the tax bar and are therefore the prototypical material whose disclosure is mandated by the Freedom of Information Act.

I feel that the Internal Revenue Service has a number of real interests and adhering to this decision and in making all private rulings public, with appropriate deletions to protect confidential material that might be contained in the ruling itself and I think that the tax system is ill served by any suspicion that private rulings serve as a vehicle for preferred treatment to certain taxpayers. Now I hasten to believe that I do not believe that the Internal Revenue Service has used the ruling process to give this preferred treatment on any intentional basis, but the suspicion is there and I think it does harm to public confidence. And I think that again your searchlight, that you refer to in your opening statement, is a very fine disinfectant.

Senator KENNEDY. Well just on that point, do you think that ITT could have gotten the kind of ruling they got without some kind of preferential treatment?

Mr. CAPLIN. I have no reason to think that there was any preferential treatment there. From everything I understand there was an application for a ruling in the normal course of events and certain additional submissions. I also understand that after the additional

submissions the ruling was issued with rapidity. I think many tax practitioners felt that the ruling was a very liberal one containing something known as a purge theory. That was quite a secret I submit so far as the tax bar in general was concerned. There was no general publication of this purge theory before.

What happened was that ITT acquired Hartford in a stock-for-stock exchange. I think they originally planned to do a merger but they did what is known as a (B) reorganization stock for stock and the Supreme Court has said that an exchange of that sort to be tax free must be solely for voting stock. And if you pay for some of that stock in cash, you disqualify. Now ITT had bought a large block of Hartford stock for cash. And on its face it looked like they just couldn't fit into the (B) pattern. Then they went to this so-called purge and they said what if we sell this stock and then go out and, after we sell it, acquire all of the Hartford stock solely for voting stock? Well, I would say very few members of the tax bar thought that was achievable as part of the overall transaction. You would have to wait a long period of time and say this is an entirely new transaction. You got to sell first and wait and wait and not have any transaction immediately. The Internal Revenue Service, in other words, looks to substance; it doesn't look to form. But nevertheless they did issue this ruling that if they purge themselves in quotes from the stock that they then could later come in and acquire all of that Hartford stock solely for voting stock. But then another question arose and that is, was this a true purge, was it a real sale? And this is what the revenue agents up in New York seem to be questioning today and this is a matter at issue.

I speak only from what I read in the newspapers, Senator, and I think you have to know all of the facts to make a true evaluation of that ruling.

Senator KENNEDY. Sure.

Mr. CAPLIN. It has become fairly public and perhaps the Revenue Service will be able to explain to you some of the details.

Senator KENNEDY. As I understand it, under the procedures that existed within the Internal Revenue Service, it was not made public as a matter of course. It was only revealed to the public after the press and other groups had pressed for a full disclosure.

Mr. CAPLIN. That is correct. And even then they didn't really make the ruling public. They issued a Revenue procedure which described certain circumstances under which they would rule in this case, but even there it was a good deal more limited than the specific ruling in the *Hartford* case.

Senator KENNEDY. So I mean the point that you are making here is that private letter rulings vary from a decision made affecting one of the major companies or corporations in this country to decisions made regarding individual taxpayers? I mean, rulings cover this whole range of circumstances.

Mr. CAPLIN. Oh, yes.

Senator KENNEDY. So your point is that for both a sense of fairness to the American people and a sense of confidence that no one is getting special treatment, many of these letter rulings are of such a consequence and importance that they should be made public and available even though perhaps some particular rulings should be sanitized in

such a way as to permit full disclosure without compromising business transactions or confidential information?

Mr. CAPLIN. That is right. I do think that this is a very sensitive point. For one thing, there are hundreds and millions of dollars, and I think I am being conservative when I use that figure because I might use billions of dollars, involved on an annual basis under this ruling process. There are very few major transactions——

Senator KENNEDY. Do you mean that billions would come into the Government or billions are not coming into the Government?

Mr. CAPLIN. I was thinking of the potential tax liability involved, which would run into the billions. If they were adverse rules, the transactions might not go forward. And of course you can't say that the Government wouldn't collect these billions of dollars. Frequently the people would go forth with the transaction without the ruling and would take their chances on audit and then might have to pay either all of the money involved or they might have to settle their case based upon the competing litigation hazards.

Now in the case you have referred to, the ITT case, I don't know how much money was involved but there would be capital gains taxes imposed on all persons to the transaction who had transferred their shares. Now the company had made statements that it would reimburse the shareholders for any additional tax. It could be that in litigation the Government would lose. I don't know because I don't have all of the facts. It also could be that even though there is taxation in 1 year, people get what is called a stepped-up basis and they have less tax in another year. But what I am saying there is a lot of money involved in these rules and this is a very important exercise of discretion.

The Service has many reasons for not wanting to disclose. For one thing they say that we don't want to compromise the confidentiality. Beyond that they say it is going to slow down the whole process and it will take time and we will have to use more people to make these decisions and we will be holding ourselves up to ridicule and contempt if we come out with a bad ruling and we are now ruling fast and we are moving fast and don't have all layers of review so that we are willing to pay the price of an error on individual taxpayer's case. And again I want to emphasize I think the principle is administered with a sense of honesty and integrity. I don't believe that there is any widespread abuse that sometimes is alluded to. But on balance it seems to me that disclosure is much the preferable course with the suitable deletions of information identifying taxpayers or disclosing otherwise confidential matters.

I can envision a procedure that I believe is entirely workable wherein the Service would prepare the letter rulings and it would mail to the taxpayers, along with a copy reflecting the suggested deletions, and it would give the taxpayer a relatively short period of time in which to object to the formal publication and make countersuggestions, and finally it would publish the publication by placing it in the public reading room and filing it under a suitable index which would give people an opportunity to locate that ruling.

I might say there that in the final analysis the cause of equality among taxpayers, which is very much at stake here, seems to me more fundamental than the issue of easy administration.

The Court of Appeals of the Fourth Circuit recognized this when it said:

The Freedom of Information Act was not designed to increase administrative efficiency, but to guarantee the public's right to know how the government is discharging its duty to protect the public interest.

Some time ago the Securities and Exchange Commission adopted this philosophy when it determined to make its "no action" letters available to the public. That was a major step forward. Such letters are, in many respects, comparable to the private rulings of the Revenue Service.

In litigation, the Revenue Service has advanced two principal objections to a disclosure policy—and I imagine Mr. Fields will comment on this—they say that (1) rulings are exempt from disclosure by reason of sections 6103 and 7213 of the Internal Revenue Code and are aimed at preserving confidentiality of taxpayers information submitted to the Government when they file returns to encourage compliance.

These provisions do not appear to cover IRS interpretations of law given to the taxpayer. After all the taxpayer comes in and asks the Government to exercise the discretion. It is asking for a favor from the Government because there is nothing in the code, except in a few limited cases, which requires the Revenue Service to issue rulings. There are certain areas where the Service must rule in foreign transactions for example, in changes of accounting methods and the like, but the bulk of the rulings are discretionary rulings. The Service provides this very fine machinery for taxpayers and I think taxpayers should be willing to pay the price of having their ruling disclosed for substance. I cannot think of a case—and we handle many returns—that would be altered if we had to make these rulings public. I cannot think of a client who would say do not go forward under these circumstances. It might have occurred, but so far as let us say the last 10 years since I have been back in private practice I cannot think of a single instance where we would not have gone forward.

On the question of whether or not there is an equitable procedure in the courts to limit the Freedom of Information Act I should state my own conclusion that I think the language of the statute is very specific and is aimed at eliminating this so-called traditional equitable procedure, but I think if any doubt remains, a specific amendment on this latter point might be worthy of the consideration of this subcommittee and of the Congress. And I think that you will hear more about that from Mr. Field.

Senator KENNEDY. Let me just present one scenario for your reactions. Suppose the thrust of the argument of the Internal Revenue Service is that every one of these rulings given is based on a particular fact situation, and that the rulings are given solely on the basis of that particular fact situation, and therefore they shouldn't be considered as precedents; and, the publication of the rulings may have the effect that other taxpayers will try to tailor their particular situation as closely as possible to the ruling situation, thereby bringing confusion and delay to individuals affected?

Mr. CAPLIN. Let me say this, Senator, I have considered this issue very thoroughly and indeed I wrote an article when I was Commis-



sioner of Internal Revenue to the subject, that is a statement of policy, explaining the administrator's viewpoint.\* There is tremendous pressure on the Revenue Service to get out these 30,000 rules. Taxpayers want them in a hurry. They have a staff within the Revenue Service under the Assistant Commissioner and they have various branches considering different subject matters.

What is happening here is that the people who are writing these rules, and they have varying backgrounds and abilities, are really acting like courts. They are in the nature of declaratory judgments even though our Internal Revenue Code says that there shall be no declaratory judgments. Our statutes generally provide there shall be no declaratory judgments in tax matters, and this is a very serious responsibility. But this responsibility is being spread amongst an awful lot of people.

You may have somebody who has been out of law school just a few years passing on a matter which he doesn't quite identify as being very significant but which might have a widespread effect. And the Revenue Service says that in the interest of weighing protection of revenue on the one hand and also giving service to taxpayers and taking care of their particular transactions, we are willing to take the risk that along the line there may be errors and inconsistencies in the rulings process, however, we cannot take that risk if it is going to be a nationwide matter and so we want that ruling to bind only the individual taxpayer or corporate taxpayer who went for the ruling.

You see the competing considerations; do you want speed or do you want to give service or do you want to protect the revenue? Now I still think you got to take that risk, Senator. You cannot have every single ruling—and I regard rulings as an essential part of tax administration and are very important—you cannot have everyone go up to the Chief Counsel because instead of 30,000 rulings a year you would be fortunate to have 3,000 rulings a year. And I would think you would have an adverse impact on our general economy, on the operations of business.

And I think this is very good. Other nations are beginning to copy this.

At the same time it is a question of how much you lean in one direction or the other. I do not think that this disclosure policy with selected deletion will have an adverse impact. I think that the program will continue with its full vitality.

#### PORTIONS OF THE IRS MANUAL

Senator, let me just close and touch on one point briefly and that is the question of the manual. I think the Longs will testify in more detail on their difficulties.

The Service has made some progress on disclosing more and more of its manual after they lost cases in court. There are issues on items not yet disclosed. And I have noted earlier that the act is not simply a disclosure statute, but that Congress has carefully delineated a variety of areas in which nondisclosure should be the rule. And one of the principal areas relates to law enforcement. While Congress required

\* Caplin, *Taxpayer Rulings Policy of the Internal Revenue Service: A Statement of Principles*, 20th Ann. N.Y.C. Inst. on Fed. Tax 1 (1962).

that administrative staff manuals be disclosed to the public, the legislative history leaves little doubt that the term "administrative" was employed in a special sense in counterdistinction to matters of law enforcement.

And the courts, particularly in the *Hawkes* case, have generally recognized that disclosure is not required when it would significantly impede the law enforcement process.

This strikes me as a sound commonsense position, which protects a real and legitimate interest to the Service and I would think it proper and desirable for the Service to insist upon that clear policy choice made in the act and to resist disclosure of portions of the Manual whenever, instead of informing the public on the meaning of the law, the disclosure would enable persons to violate the law and evade detection.

I sort of underscore that ; violate the law and evade detection. Is this really the meaning of the inquiry. That has to be considered.

#### CONCLUSION

Now by way of summation, Senator, I regard the Freedom of Information Act as representing an enormous step forward in the cause of effective administration of the laws and particularly the tax law and the spirit of the act strongly favors maximum feasible disclosure with nondisclosure being justified only on grounds clearly specified in the statute. I am of course under no illusions that the act is free of areas in which reasonable men could differ. But the act as a whole must be seen as an invitation to a liberal disclosure policy—a policy which, in the case of the Internal Revenue Service, can only serve to improve its effectiveness.

Now in my experience in recent months the Service has appeared to have embarked upon a more liberal course. I am hopeful that the future will bring further moves in this direction.

Senator KENNEDY. Well, that was very helpful testimony, Mr. Caplin. We are going to come back to some of these points through the morning. Of course the Freedom of Information Act was not in effect when you were the Commissioner of Internal Revenue, but obviously the points you have made here are based upon living under it over a period of time, and I think the balance judgment of both being inside the system and outside the system as well is of great help. I think there have been some very constructive comments and guidance for the Internal Revenue Service here where, if followed, will make a very major difference in their administration of the FOIA. We do recognize this special position which you bring, and the special focus which you give to us.

Mr. and Mrs. Long, we want to welcome you here. You brought successful lawsuits against the Internal Revenue Service under the Freedom of Information Act, and the Internal Revenue Service tells us that you provide their disclosure staff with more work than any other member of the public. I think that is probably the finest introduction for the purposes of these hearings that we could possibly have, and we look forward to your testimony. We will include it in its entirety in the record and you can take as much time as you like. We will interrupt you a few times and look forward to your comments.

## STATEMENT OF MR. AND MRS. PHILIP LONG

Mr. LONG. Mr. Chairman, we are Phil and Sue Long of Washington and we appreciate—

Senator KENNEDY. Maybe you first could tell us just a little bit about yourselves.

Mr. LONG. Well, I am a businessman in the real estate business and a property owner in the Seattle area. I inherited a business from my father about—well, he died about 15 years ago and I have run it for that length of time. We were audited about 5 years ago by the Internal Revenue Service and they found about 33 errors in our tax return.

Senator KENNEDY. And Mrs. Long, do you have special background I understand? Could you just tell us that for the record?

Mrs. LONG. I am a graduate student at the University of Washington and I am working on my doctorate. I plan to do my dissertation on the Internal Revenue Service.

Senator KENNEDY. You are a statistician as well I understand?

Mrs. LONG. Yes, well, I am not a statistician. I am majoring in sociology but my specialty within sociology is statistics.

Senator KENNEDY. Well, you have collected a lot of material on statistics here and I want the record to include that you have a sound background in the areas which you are going to comment on here this morning.

Mr. LONG. We would like to discuss some of our experiences and difficulties of obtaining information from the Internal Revenue Service under the Freedom of Information Act.

Our experience with trying to obtain information dates back to 1969—now over 4 years ago. The Internal Revenue Service placed various roadblocks in our path—from noncooperation and refusals to lies and intimidations.

Even more discouraging is that, irrespective of a growing number of unfavorable court decisions like ours against the Internal Revenue Service, officials' attitudes remain little changed; indeed, they seem to have hardened since September of last year.

We would like to discuss today, in particular, our difficulties in obtaining access to: (1) IRS secret administrative law, (2) IRS internal operating statistics, (3) IRS scientific studies on our tax system, and (4) IRS indexes to its internal document system.

## SECRET ADMINISTRATIVE LAW

In regard to administrative law, it is particularly appropriate to begin with the availability of IRS' "secret administrative law", for this is where we really began over 4 years ago when IRS refused to tell us the guidelines. It was following a tax audit of our small business.

To gain perspective, it is helpful to record the testimony of the Treasury Department during 1963, 1964, and 1965 hearings on the then proposed freedom of information bill. Again and again the complaint was made that to pass the law would require the release of hundreds of thousands of Internal Revenue Service secret rulings, millions of tax compromises and determinations, and volume upon volume of administrative staff manuals, technical guidelines and interpretations—disclosures IRS vehemently opposed.

Despite this opposition, the act passed and these requirements became a reality. Now, what IRS failed to prevent through legislation, IRS now seeks to prevent through various subterfuges it has devised. Today, as before, IRS refuses to make documents available under the Freedom of Information requirement mandating the release of secret administrative law.

IRS simply announced that it had no orders or opinions issued in the adjudication of cases, yet its revenue agents, collection officers, district and appellate conferees continued to issue such determinations daily.

IRS publicly announced that it adopted no statements of policies and interpretations while continuing to issue tens of thousands of secret tax rulings each year.

And IRS announced that it had no administrative staff manuals or instructions to staff that affect a member of the public, while in house, the printers were kept busy churning off new directives daily.

Finally, in the face of two adverse court decisions and growing congressional pressures, IRS Commissioner Johnnie Walters promised that all 32 feet of the Internal Revenue Manual, with a few tolerance criteria deleted, would be released to the general public by March 31 of last year.

It is now precisely a year later and by volume measured on the reading room shelves, only about one-third of it has been released and even that is yet to be made generally available to district offices and a taxpayer who seeks it. One must now write or come to Washington.

But even this limited disclosure does not mark a real departure in IRS position. Recently, on January 30, 1974, IRS Assistant Commissioner John Hanlon wrote us from Washington:

We do not consider Internal Revenue Manual materials to be subject to 5 U.S.C. 552(a) (2) inasmuch as they do not affect a member of the public.

Senator KENNEDY. Now is there any member of the panel that would agree with that observation, and who believes that the Internal Revenue materials do not indeed affect the public? Quite clearly, you don't believe that, do you?

Mrs. LONG. I don't think there is any question about how it affects the public. We have seen two court cases that held that. And if you just read any page of the manual, it tells how the agents are supposed to audit returns, how appeals offices are supposed to make determinations of one's liability. I don't see how there can be any question that certainly something here affects the public.

Mr. LONG. One thing that might be interesting is that before we won our court case, in the regions it was very common for them to use those two arguments in the response to our request. I mean, we have scores of letters where they have used those arguments.

Senator KENNEDY. Which arguments?

Mrs. LONG. This was the grounds they used after we filed our court suit, saying there was nothing in the manual that affected any member of the public. And what is discouraging is that, in light of the fact that you had several court cases that held to the contrary and in light of the fact that the IRS Commissioner last year testified that they were going to make the manual available, they now come around recently and have said, I don't think there is anything that affects the member of the public in it.

Senator KENNEDY. What about you, Mr. Caplin and Mr. Field? The Longs are just suggesting a fair and reasoned review of this material, and quite clearly, on its face, it indicates it does affect the public. They have two court opinions supporting them. Now why the built-in reluctance to comply with the court orders?

Mr. CAPLIN. Well, I think in the first place, the Internal Revenue Service has a very heavy burden to prove that something is not covered by the act. And if these court cases stand up—and the one that Mr. Field's organization has on appeal particularly—they are going to have to convince the court that there is no public interest and there is no coverage under the act and they are going to have to come in there in camera and reveal their records and they are going to have to give an explanation. We have seen too many aspects of government hiding behind public interest and the like, and I think we will reach the point in our history when all agencies of government and elements of the executive branch are going to have to be forthcoming. So I don't think that they can continue to hide.

Now the difficulty that the Longs are describing of course is, what does the private citizen do when someone in the executive branch says you have no interest in this. What is his practical remedy here? Now they can go to court but the expense involved and delay are things that they have encountered and this is the substance of their complaint.

Senator KENNEDY. And they got two opinions from the court that support their position and even with that support, they still have difficulties. Mr. Field?

Mr. FIELD. I just have a brief comment. First in response to a question as to whether or not the manual affects members of the public, I think that we have some indication that it clearly does in that hundreds of tax attorneys in the last year have purchased, at \$130 per set, one or the other of the two editions of the Internal Revenue Service manual which have sprung up in response to the release of that manual or partial release of that manual by the Internal Revenue Service. So, obviously, tax lawyers feel that it is sufficiently worthwhile to them to have access to that document so that they are going to put their money on the line and not just a little amount of money but a substantial fee.

So far as the related question as to why the Internal Revenue Service argued that this manual does not affect the members of the public, I think that the origin of that argument probably lies in the portion of the Freedom of Information Act which exempts from disclosure internal agency operating rules. The committee reports relating to that exemption make it clear that those rules relate to such matters as allocation of parking spaces, the cafeteria privileges of various employees, and other minute details which clearly don't affect members of the public in the way in which any page of that Internal Revenue Service manual does. So I think it was just a misconception of the Service of the meaning of that exemption at an early stage. The courts fortunately declared what that exemption means and from this point forward that is the law.

Mrs. LONG. But even though supposedly from this point forward that is the law, we get a letter just 2 months ago from the Internal Revenue Service Commissioner saying well, we don't believe in that.

Mr. LONG. Indeed it is our understanding that IRS still contends that the entire manual is exempt from disclosure under Freedom of

Information Act exemptions (b)(2) and (b)(5) should it wish to invoke them at any future date. In other words, they are taking the position right now, that is the staff of the Internal Revenue Service, that they are just giving us the manual as a privilege and at some future date the court decisions will support their position.

In addition, what were to be a few tolerances to be removed, have grown to encompass a larger and larger segment, while other of the more interesting material has been suddenly declared obsolete or radically abridged when a new change sheet is issued. Part VIII of the manual deals with regional appeals within IRS, which through court action we obtained in its entirety 18 months ago, has now shrunk to only one-third of its former volume and IRS is now denying access to some of that. You see, it is a loose leaf manual and they change it all the time. We have asked for certain sections of it and recently they have denied those sections of the manual that we actually won in court on. It is quite amazing that they even deny us part of the manual that we took them to court on and won the point on.

Mrs. LONG. But another example is IRS refusal since September 21 of last year to make available from its manual a secret directive entitled "Special Service Staff Activities"—a directive issued at or about the same time a second directive was publicly issued by Commissioner Alexander supposedly abolishing the group after strong public criticism surfaced over its activities. (This is the unit contended by some to have been set up secretly within IRS to harass particular activist organizations.)

Senator KENNEDY. Are you suggesting that this special service group has not yet been abolished?

Mrs. LONG. We are concerned that if the Commissioner had been issuing two directives, one public and one secret, during the same week within the same time, that perhaps the second directive might have something interesting in it and they refused to release it.

Senator KENNEDY. Do you think it would be useful for us to ask them for that?

Mrs. LONG. I think it would be very interesting, Senator.

Senator KENNEDY. Very well.

[The document referred to follows:]

#### MANUAL SUPPLEMENT

(U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE)

*August 13, 1973.*

#### SPECIAL SERVICE STAFF ACTIVITIES

##### *Section 1. Purpose*

The purpose of this Manual Supplement is to abolish the Special Service Staff, Collection Division, National Office.

##### *Section 2. Background*

The abolishment of the Special Service Staff necessitates revoking of instructions in the Collection Tolerance and Criteria Handbook, IRM 5170, concerning that Staff.

##### *Section 3. Effect on Other Documents*

Text 120 of IRM 5170, Collection Tolerance and Criteria Handbook, is revoked, and should be so annotated in pen and ink with a reference to this Supplement.

DONALD ALEXANDER,  
*Commissioner.*

Mrs. LONG. The story is the same with IRS's withholding of other similar manual and staff instructions such as RC & DIR memoran-

dums, audit coordination digests, technical guidance letters, review digests, regional visitation reports, and actions on decisions to name but a few.

#### INTERNAL OPERATING STATISTICS

Turning next to IRS internal operating statistics, after 4 years of effort, including a successful court suit against IRS's withholding of audit statistics, we find ourselves back to almost where we started with the refusal by IRS to make its current operating statistics available.

The statistics we fought over in our court suit covering the period 1969 are now being withheld from us for the current period—along with almost all audit, appeals and collection data we have requested since last September.

This is despite the fact that last spring IRS Commissioner Johnnie Walters conceded in open testimony before the Senate Appropriations Committee that IRS had no legal basis for withholding its operating statistics, indicating "we now are granting requests for statistical materials."

For a while statistics were made available, but last September the curtain of secrecy again descended. The bookcase of statistical reports, including decades of quarterly statistical reports, were ordered removed from the IRS Public Reading Room shelves. Similar statistical reports met the same fate and even "The Audit Story" for which we had a written authorization from Assistant Commissioner Hanlon to inspect was withheld from us with the curt explanation that such permission was "no longer operative."

Since September our written requests for at least 35 separate statistical reports have simply not been acknowledged or answered by Assistant Commissioner Hanlon and our letters of appeal to that new Commissioner, Donald Alexander, have been ignored.

Senator KENNEDY. Why do you think the new statistics have been ignored?

Mrs. LONG. Well I think we give some examples in our testimony of just gross inconsistencies in the kinds of treatment taxpayers are getting across the country depending on where you live, who you are, how big you are.

Senator KENNEDY. Yes; those are very interesting. I would like to get to those.

Mr. LONG. One other point I would like to make and that is that we feel that having 100,000 pages of IRS materials in our living room doesn't do us any good. We have tended to pass along to the news media some of those. And since the IRS knows we pass onto the news media, I think that is partially the reason.

Senator KENNEDY. You have heard back from the IRS on some of these and have not heard on others?

Mr. LONG. That is correct.

Senator KENNEDY. And their regulations dealing with receipt and control of correspondence in section (C), paragraph 2 states:

The response due date will be ten working days after receipt for initial inquiry and the twentieth working day after receipt for appeals.

Mrs. LONG. I think that is a really interesting point because when we finally obtained a copy of that directive, we wondered why it was

that we weren't getting these responses within 10 days. In fact we never got an acknowledgement and here it had been 7 months. So we dropped by and had a little chat with the IRS Freedom of Information Branch Chief Mark Farbenblum—

Senator KENNEDY. He must have been glad to see you.

Mrs. LONG. He was just thrilled.

Senator KENNEDY. Tell us about that.

Mrs. LONG. I asked him, I said "you sent us this directive and, you know, you said something about responding within 10 working days and you know, it is usually many months before we ever get a response and we have so many that you haven't even bothered to acknowledge for about 7 months" and I said "what about it?" and he just shrugged nonchalantly and said "Oh, we don't pay any attention to that directive."

Mr. FIELD. I can testify, Senator, that we too have filed requests for portions of the Internal Revenue Service Manual, which have gone unanswered for periods of up to 4 months. Indeed some have gone unanswered for longer than that. So the manual is not being generally released to the public despite the court decision which the Longs have won and despite the order of the Sixth Circuit Court of Appeals in the *Hawkes* case.

Senator KENNEDY. And then does it appear that they are reluctant in terms of responding to the requests? Do they respond readily?

Mr. FIELD. Absolutely not. It may be they have set a too high standard of perfection for themselves in those regulations. Ten working days is a very short period for a government agency to react to anything, but it seems to me that the time lags which we have experienced, and which Sue Long has just described, are far too long.

Mrs. LONG. I think those directives, however, provide a loophole big enough that you could drive a truck through and that, if they can't respond within 10 days, then all they have to do is send out an acknowledgment and they haven't even bothered to send out an acknowledgment.

A third area we would like to discuss briefly is our attempts to get IRS scientific studies. In this area we had very little success. We have been refused permission by Commissioner Donald Alexander, his predecessor Johnnie Walters, as well as officials serving under former Commissioner Randolph Thrower, to examine even indexes to such studies.

For example, right before April 15 in 1972 scare headlines hit the front pages across the country that an IRS study had shown 97 percent of returns prepared by tax preparers fraudulent quoting both Treasury Secretary John Connolly and IRS Commissioner Johnnie Walters. Indeed the TV evening news carried Secretary Connolly's assertions live.

We immediately wrote IRS in Washington requesting to look at the "study report and tabulations" which had been prepared. IRS flatly refused to furnish us with any information claiming that all of the data was exempt as an "investigatory file" under exemption (b) (7) of the Freedom of Information Act. We appealed to the Commissioner but the only records the IRS finally agreed to release from this alleged "investigatory file" was a copy of a public speech by the Commissioner for which we were billed \$9.75.



We later learned indirectly that the study IRS had made was of a small number of tax preparers selected because IRS already suspected of fraud and of these IRS had only been able to find what it alleged was fraud in 20, not 97 percent.

More recently, the U.S. News & World Report of September 17, 1973, quoting IRS sources stated: "5.4 percent of businessmen failed to file returns." Citing the article's 5.4 figure we wrote Assistant Commissioner Hanlon and asked to examine IRS records on this matter.

It took over 2 months before Assistant Commissioner Hanlon responded. While conceding that the figures requested had been compiled, Hanlon asserted:

Since public knowledge of the information contained in these documents would significantly impede or nullify Internal Revenue Service actions in carrying out its responsibility to administer the tax laws, we assert the exemption provided by 5 U.S.C. 552(b) (5) in denying your request.

Four months ago we appealed this denial to the Commissioner. We pointed out that exemption (b) (5) does not cover factual reports and scientific studies. We further noted that IRS had chosen to release the figures to the U.S. News and having released the data they could now hardly hide behind claims the information would "impede or nullify IRS actions." To date we have received not even an acknowledgement from Commissioner on our appeal.

Senator KENNEDY. Yet me ask you Mr. Caplin, do you think the disclosure of statistics of this nature would really impede or nullify IRS actions in any way?

Mr. CAPLIN. No; I think it just is again part of the reluctance to remove the veil. Part of IRS stance is sort of encouraging compliance. I think they think very carefully about revealing areas of noncompliance. They do that rather selectively. I think the system is based upon a feeling that everybody is paying his fair share. If somebody is beating the game, then this begins to worry them. And I think this is part of the concern today whether or not taxpayer compliance will lessen, as some of the agents fear, because of some of the publicity about large taxpayers paying little or no taxes.

And so I think kind of built into this Revenue Service is just don't say too much about the operation. And I thought we had gotten over the hump a little bit in view of the court cases and in view of some of the attitudes before Senator Montoya's committee last year and that is why the Longs thought they were going to get "The Audit Story," which is a book explaining how much the Revenue agents propose on a deficiency, how you can come out a little better if you go to the Judicial Conference, how you can come out a little better in the appellate division and perhaps even to the Tax Court of the United States. And I think the fear is that if it might be explained, this would encourage the taxpayers to use the appeals system more rather than disposing of the case below.

So it is all of this administrative hesitancy, which I don't think is unique to the Service alone, which is causing the problem. I think it is kind of a disease of the bureaucratic world and frequently in large organizations outside of the Government you will find the same thing.

Senator KENNEDY. As I understand it after the Commissioner indicated that "The Audit Story" was going to be made public, the IRS actually discontinued the publication?

Mrs. LONG. Yes; they promised Senator Montoya they were going to make it public. So what they did was stop publishing it and they refuse now to make the other statistics that were published in it available to use upon request.

Mr. FIELD. I think in connection with this that perhaps one of the Service's fears about releasing statistics that relates to taxpayer compliance is the feeling that accurate statistics in that area about the extent of noncompliance with the Revenue laws might encourage further noncompliance. While I understand that argument, it seems to me that what it really amounts to is that the Service is failing to bring to the attention of the public and to the attention of the Congress the problems that it has encountered.

My own feeling very simply is that unless we know, as members of the public, and unless Congress knows where the service is encountering problems of compliance, neither the public nor the Congress will know what needs to be done to strengthen the Internal Revenue Service to assist it in collecting taxes fairly on a geographical basis and on an income basis and on a type of income basis. So I agree quite strongly with the Longs that the Service should be releasing statistics which will enable us to know just how good or bad a job it is doing even though it may seem, when the statistics are released, that the job is not quite perfect in some areas.

#### GENERAL ACCOUNTING OFFICE AUDIT OF IRS

Senator KENNEDY. Just before we continue, Mr. and Mrs. Long, I think we in the Congress have a very high regard for the General Accounting Office, for example, in inquiring into agency operations. I am also chairman of the Refugee Committee, and we have used the GAO with great success in terms of expenditures, programs, and so on in Southeast Asia and I think they have performed very creditable service to the Congress. Yet as I understand it, the Internal Revenue Service is exempt from GAO auditing. I would just be interested hearing from the panel.

Mrs. LONG. They are not exempt from GAO auditing. The law does not exempt them, but IRS takes the position by strained construction in our opinion of the Internal Revenue Code that they don't have to make things available to the General Accounting Office. They base that on the confidentiality of tax returns, but Internal Revenue Service has even refused to furnish GAO statistical data from their scientific studies just simply because they didn't want to release it.

Mr. CAPLIN. I think the GAO would dispute the position of the IRS on any exemption and this has been an ongoing controversy there on the extent of the GAO authorization. I think that you would find sympathy within GAO, great sympathy, toward extending its jurisdiction or at least recognizing what it claims its jurisdiction is.

Senator KENNEDY. What would be your feeling about whether it would be useful or not to have the GAO audit the Service?

Mr. CAPLIN. I can't help but have a little sympathy for the Commissioner about being involved in any sort of a full scale auditing of that enormous operation of the Internal Revenue Service. But it seems to me on a selective basis, to pick out a target, there ought to be a way

to work this out and to have cooperation between the GAO and the Internal Revenue Service.

Senator KENNEDY. I think that is generally the way it is worked. Members of Congress don't ask for an audit of the Defense Department or HEW, but target certain programs or certain divisions, and I think that that is when they are by far the most effective.

Mr. CAPLIN. Well I think it might be worthwhile to get the Service to respond fully to that too in terms of what is their objection. I think primarily that they would lean on this question of examination of returns and their limited access under the IRS Code for examination. At the same time we do open up those returns to congressional committees and we do open it up to State tax authorities. And it seems to me on this selected basis that it is not shocking to think that GAO has the right to make certain examinations.

Mr. LONG. I think one thing that might be considered is the basic statistical data for 45,000 to 70,000 employees is not available to the GAO or is not in the Library of Congress. You see, the bureaucracy of the Internal Revenue Service, a big part of it is the audit compliance section of it and that has 45,000 to 70,000 employees, but they only contribute for about 3 percent of the revenue. And they are the part, that is the group that does the auditing of the 2 million people per year. We feel that just reviewing the basic statistical data which is in "The Audit Story," just taking "The Audit Story" and then going and finding the background and going back one or two steps so that you get the fundamental statistical data and how they arranged it and then working from there, is important. We will also bring up later the taxpayers compliance measurement programs, where if you go in depth in existing material that is sitting over there on Constitution Avenue—it is not at the Congress or the Library of Congress or at the GAO—we say just get that basic data and you will find fantastic inconsistencies and various things of that sort.

#### INDEXES TO IRS RECORDS

Mrs. LONG. Turning next to indexes to IRS records, indexes are not a particularly exciting subject, but they are basic to the issue of public access.

When we have approached the agency without knowing the specific document number, we are usually given the run around. We are told, "No records exist," or that "The information isn't compiled," or simply, "We are unable to locate any records pursuant to your request." Yet often it turns out later that these answers were untrue.

To cite a recent example, we received a letter from Assistant Commissioner Hanlon stating that the Agency did not compile figures on the number of tax returns filed by income last year. We thought that an amazing statement to come from one's tax collection agency in this computer era. Indeed we were almost positive that IRS was misleading us, and we had a fairly good idea where such information would be found and who in the agency we would ask if we were trying to locate it. However, the second catch is that IRS imposes formally or informally a "gag" rule on its operating employees so that we are refused permission to speak with anyone having direct knowledge of where information is located.

Last November we wrote IRS Assistant Commissioner John Hanlon in Washington, D.C., and requested "authorization to inspect and copy the form 1767 files" which index IRS publications. Nearly 2 months later we finally received a letter denying our request on the grounds: "There are no form 1767 files as such."

Since each form 1767 is assigned a sequential number and made out in five copies (indeed the fifth copy is referred to as the "control" card), we found IRS's response curious.

After many phone calls it developed that files were indeed kept of form 1767's, the most accessible being those kept of the fifth copy of form 1767, the control card, which is referred to as part 5. When asked why we had been told no files existed, Mark Farbenblum, Internal Revenue Service Branch Chief, replied "You asked to see the form 1767 files, if you want to see these others you would have to ask for the part 5 form 1767 files."

Senator KENNEDY. Do I understand that the document has five parts, and the fifth part, was labelled by the IRS as "control card number five." So, when you asked for the basic document, 1767, you didn't get the document because you hadn't specifically requested control card 5 of document number 1767?

Mrs. LONG. Yes, this is a copy here of this form. As you notice, it is also attached together with carbons. So when we asked for the form, they stated they didn't exist when in fact each of these copies was in the files, but they told us they weren't available and they didn't exist.

But this is not the end of the story on our form 1767 request for an appeal to the Commissioner we were denied access to the current year's files. The reason? We were just told that the people who kept the files "Just don't want you in their office."

Even a request for a specific card index was denied last month on the grounds that our request is "too broad to be considered". We were told they will only consider a request for one card at a time.

Senator KENNEDY. Why is that? Why will they only take one request at a time?

Mrs. LONG. Well the thing that we wanted was an index. And this has happened. This is a new ruse they are using. We have been getting letters like this back in the last 3 months where when we have been asking for index systems so that you could identify documents, what they say is "you tell us what the document is and we will show you the card on the index for it" when of course you want to look at the index to locate what documents are there. It is just trying to put to-another roadblock on the means of identifying the names and numbers of documents you want to look at.

I think the point I might point out, The Audit Story was discontinued and we have found they have discontinued quite a few of the items we have requested and then they publish them under another name and number and the form that we are asking for is their form for asking for publications for each individual documents so that by going through this card file we could see what new documents they have and by name and number we could find out how they have manipulated their coding systems. So that we could just find out what they are doing.

## CHURCH OF SCIENTOLOGY EXPERIENCE

Senator KENNEDY. I understand that your experience has been shared by other individuals and organizations and one such organization is *Freedom Magazine*, which is published by the Church of Scientology. We will include their letter to me in its entirety in the record, but one paragraph reads:

On March 27—which is last week of course—two inspectors came from the Internal Revenue Security Division of IRS, Jerry Daily and William Buffington came unannounced to the Church of Scientology of Detroit where the Detroit Freedom of Information is located. The purpose of their business was to investigate a report received that a representative from Freedom distributed copies of IRS documents labelled "Official Use Only" and the agents were referring to the Table of Contents to the Internal Revenue Service Intelligence Manual mentioned above. Apparently the agents had not been informed of the fact that these documents had been made public by the Internal Revenue Service's national office in August of 1972 almost 2 years earlier.

And so this goes on.

[The document referred to follows:]

MARCH 25, 1974.

Hon. Senator KENNEDY,  
431 Old Senate Office Building,  
Washington, D.C.

DEAR SIR: We have been extremely interested in the administrative practices of the IRS for the past three years and have endeavored through our Journal to keep the general public, as well as government agencies, fully and accurately informed in this area.

In this regard representatives of FREEDOM around the country have just conducted a survey with regard to IRS offices and their compliance to Freedom of Information regulations. As you know IRS Manual Supplement 1(19)G-37 (Rev. 1) states that "An IRS local telephone directory is non-exempt 'identifiable record' within the meaning of subsection (a) (3) of the 'Freedom of Information Act.'" This Manual Supplement is entitled Release of IRS and Other Telephone Directories to the Public.

In the cities listed below FREEDOM representatives had an individual go to the IRS District Office and request a copy of such a directory listing from all the employees in that office. The requester simply asked for the telephone directory as an average citizen.

Our intention was not to be secretive in any way. Our interest was solely one of wanting to know how the Freedom of Information Act was administered by the Internal Revenue Service with regard to an average individual wanting some information from the agency.

As the FoI Act does not require one to state "why" he or she wants a particular item(s) the requester in this case was simply instructed to ask for a copy of the telephone directory listing all IRS employees of the district office giving no particular explanations as to "why" he wanted the directory.

The survey was done in many cities and each requester was asked to fill out a brief questionnaire following his visit. The results of the survey are listed below by city. Affidavits are, of course, available if necessary.

#### *Los Angeles*

The requester did not receive a copy of the directory. He was told that he would have to write to the District Director and let him know exactly why he wanted a copy. Additionally the requester was asked why he wanted the directory, which agency he was with and exactly who he needed to contact. He spoke with two employees with regard to obtaining a copy of the directory.

#### *Hawaii*

The requester did not receive a copy of the directory. He was told that it wasn't available to the general public and that it was for inter-office use only.

He was asked many times why he wanted the directory. He was also asked what company he was with, who he represented, what he wanted to use the directory for and how he came to know of such a telephone book. The requester actually tried twice in this case. He was also told that "practitioners" only were allowed to view a copy.

*Portland*

The requester received a copy of the directory. Though he was asked why he wanted it and if he was from an outside firm, he received the directory quite easily.

*San Francisco*

The requester did not receive a copy of the directory. He was told that IRS did not give them out to the public. He was asked if he worked for the IRS. The requester was referred by the receptionist to the Cashier. The requester was asked why he wanted the directory and was told by an IRS employee (referring to his request) "I wouldn't know why you want one except to spread propaganda".

*St. Louis*

The directory was not given to the requester. He was told that they were for employees of the building only and that IRS couldn't give them out. The requester talked with four different employees at the District Office.

*St. Paul*

The requester received a copy of the directory. At first he spoke with an employee at the Tax Information Center and was told it was unlikely that he could get one. From there he was sent to another room where the requester was asked for whom he worked. The requester state that he worked for the Church of Scientology. The IRS employee gave him a copy saying, "Here you go; Monday is my last day here anyway". The employee who gave the directory to the requester was in the Facilities Management Department.

*Detroit*

The requester did receive a copy of the directory. The receptionist had asked the requester if he was an employee and when the requester said that he was not, the receptionist told him that she did not think that IRS would give him a copy of the directory. The requester received the directory from an employee in Personnel.

*Austin*

The directory was not given to the requester. He was told that it was not a public service to give out a directory. The requester was asked why he wanted the directory by two employees and also asked which company he was with. The requester in this case talked to four employees all together and was told "no" to the question, "You mean there isn't anyway to get one?"

*Boston*

The directory was not given to the requester. In addition to being asked why he wanted it, the requester was told that he had to be an IRS employee to get one.

It should be noted that a copy fee or monetary charge for the directory was not in any of the above cases a reason for not receiving the directory. Our interest was not to find out if the directory was free or not. We simply wanted to know if the directory was *available* and if so, under what circumstances.

What the survey shows rather clearly is the variance among IRS District Offices with regard to the administration of the Freedom of Information Act. In some cases the directory was given, in others it was not. In cases where it was not given to the requester the justifications were varied. Yet a Manual Supplement has been issued to these offices authorizing the release of these directories to members of the public.

We sincerely feel that this information as well as the additional information enclosed is of sufficient magnitude to be brought to your immediate attention.

Sincerely,

ARTHUR J. MAREN,  
Publisher.

## MANUAL SUPPLEMENT

## U.S. Treasury Department Internal Revenue Service

November 27, 1970.

## RELEASE OF IRS AND OTHER TELEPHONE DIRECTORIES TO THE PUBLIC

*Section 1. Purpose*

This Supplement revises the procedure for providing IRS telephone directories, other, or abridged telephone lists to the public.

*Section 2. Background*

Service offices often receive requests for local IRS telephone directories from tax practitioners and other members of the public. We have been complying with these requests by providing abridged telephone directories. These telephone listings should contain only the most frequently called telephone extensions by tax practitioners or other members of the public. The telephone extensions listed should usually be limited to those giving the caller general tax information since on a case related tax matter the taxpayer or his representative has already received through correspondence of personal contact the name of the IRS employee or organization to call for additional information. District Office surveys have revealed that where numerous telephone extensions by name, activity or work functions have been listed, callers became confused and this has resulted in mis-directed phone calls, interruption of Audit and Collection enforcement operation activity, and fragmentation of the service provided by Taxpayer Service Program personnel. Minimizing the number of telephone extensions we provide and emphasizing Taxpayer Service information phone extensions should relieve this problem.

*Section 3. Requests for IRS Local "Telephone Directories"*

.01 Request for "telephone directories" should be met by first providing a region, district or service center compiled listing of the most frequently called telephone extensions.

.02 Indicated below are suggested guidelines to be followed, principally by district offices, in developing the contents of an abridged "telephone directory." Using the suggested guidelines should result in not only improving service to the users of these telephone directories but should materially assist in eliminating the problem referred to in Section 2 above.

(1) Only the names of the districts' key officials should be shown. Listing of telephone extensions for these key officials is optional.

(2) In the section of the abridged telephone listings for the headquarters office, the Taxpayer Service information telephone extension shall be listed first. If deemed desirable, an alphabetical listing of types of information provided by Taxpayer Service Representatives may be shown. It should be followed by the telephone extension, if this is a separate number, for requesting tax forms, public-use documents, etc.

(3) Where it is deemed necessary, a listing of telephone extensions alphabetically arranged for tax information items related to technical matters outside the scope of the Taxpayer Service Program can be included in the headquarters section of the "telephone directory." However, the telephone extensions listed should be limited to those tax items for which information is most frequently requested.

(4) Subordinate offices below headquarters should usually list only the Taxpayer Service information phone number. For Area offices or large Zone offices, if it is necessary to list the telephone numbers of other divisional components, the listing of extensions for the office should be shown as follows:

Taxpayer Service Information: 337-0450.

Audit Matters: 337-0670.

Collection Matters: 337-0930.

Intelligence Matters: 337-0854.

(5) For subordinate offices not providing Taxpayer Service on a full-time basis, the hours when service will be available should be shown.

(6) For districts having a Centiphone installation, both the metropolitan telephone number and the Centiphone number should be listed in the headquarters section of the "telephone directory" with a legend explaining the use of each number. Subordinate offices should only list the Centiphone telephone number.

*Section 4. Requests for Complete IRS Local Telephone Directories under "Freedom of Information Act"—5 U.S.C. 552*

.01 An IRS local telephone directory is a non-exempt "identifiable record" within the meaning of subsection (a) (3) of the "Freedom of Information Act." If the requester is not satisfied with the abridged directory, a copy of the entire local telephone directory may be made available for inspection if it contains *only* IRS alphabetical and organizational listings. An available printed copy, or a photocopy thereof, will be provided upon request, subject to payment of the user charges established by Manual Supplement 17G-137, CR: 11G-55, 12G-32, 1(19)G-34, 21G-60, and 50G-21, dated July 14, 1967.

.02 If a copy of the entire directory is not available at the office where the request is made, or if copy machines and cashier facilities are not available, the requester should be informed where the directory or a copy is available and advised to direct his written request to that office. If the requester prefers he may furnish a written description of the directory, with his name and mailing address, to the person assisting him, who will forward the request to the appropriate office.

*Section 5. Request for Other Telephone Directories*

.01 Requests to inspect or obtain a copy of an entire directory containing listings of other agencies in addition to IRS should be referred to the GSA or other office which compiled the directory.

.02 Notify persons requesting a Treasury telephone directory, which includes IRS offices in Washington, D.C., that it can be obtained on a single copy (\$.40) or subscription (\$1.00 per year, 3 issues) basis from: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

.03 In these cases you may also want to make available Publication Order Form No. 1939 to facilitate ordering Treasury telephone directories. These forms are available from the Publications Branch, National Office.

.04 Copies of the Treasury telephone directory for use by Services offices will continue to be distributed by the National Office.

*Section 6. Special Requests*

Requests for listings or rosters, by grade, occupation, title or other special arrangements are not affected by this Supplement. Such requests must be referred to the National Office for consideration, as required by Manual Supplement 1(19)G-32, CR: 11G-51, 12G-30, and 50G-18, dated May 25, 1967.

*Section 7. Solicitation of Employees*

To discourage use of telephone directories, complete or abridged, to contact employees for unofficial purposes, the following statement should be printed on or attached to each copy of directories furnished the public:

This directory is not to be used for commercial or political solicitation of Government employees by mail or telephone.

*Section 8. Exemption*

This procedure does not affect the long-standing practice of furnishing directories on request without cost to Members of Congress, Federal, State and Local Government Agencies, academic and professional organizations, etc., when a Service official authorized in IRM 1244.2 determines that it is in the best interests of the Service to do so.

*Section 9. Effect on Other Documents*

This supersedes MS 1(19)G-37, CR: 11G-60, 12G-42 and 50G-25, dated May 31, 1968, and Amend. 1 thereto, dated September 4, 1968. It also supplements MS 1(19)G-32, CR: 11G-51, 12G-30 and 50G-18, dated May 25, 1967, and that, "Effect" should be noted by pen and ink on the Supplement, with a reference to this Revision.

LEO C. INGLESBY,  
*Director, Facilities Management Division.*



[A supplemental letter received from "Freedom" follows:]

FREEDOM,  
Hollywood, Calif., March 29, 1974.

HON. EDWARD M. KENNEDY,  
Senator from Massachusetts,  
Russell Senate Office Building,  
Washington, D.C.

DEAR SIR: Recently a good deal of attention has been drawn to the fact that there exists a wide disparity among IRS District Offices in their administration of Freedom of Information matters. FREEDOM representatives have witnessed many instances of this disparity. It is our wish to assist any government agency examine Freedom of Information matters and in this light, Freedom would like to convey some additional information on the issue.

Over the last three years, Freedom has campaigned against many of the arbitrary and abusive practices of the Internal Revenue Service. Our efforts have been aimed at informing citizens on a broad scale, as we believe firmly in the ideal that an enlightened citizenry will demand honest reform.

One such program was launched in the fall of 1973 when Freedom released broadly copies of the table of contents of the IRS Intelligence Manual. We were concerned over such headings as "Wiretap Evidence", "Electronic Listening Devices" and a host of other titles which we felt ran counter to the right to privacy of American citizens.

Many copies of the table of contents were distributed and, as we had hoped, many people requested the IRS documents which elaborated on the headings listed. The response from IRS clearly showed the inconsistencies inherent in the IRS's handling of Freedom of Information matters. Freedom representatives in St. Louis, Detroit, Los Angeles and other cities received different responses from IRS officials with regard to the disclosure of the same IRS documents. Some were given almost immediate access to documents which others were flatly told they weren't available. For example, while the Washington, D.C. representative from Freedom was shown many of the documents asked for, our Hawaii representative was given only a copy of a letter from the Hawaii District Director to the National Office of the IRS asking permission to turn over the documents. The letter from the District Director to the National Office stated in part:

Whatever you decide I would appreciate prompt action and would like to get copies of any response you make. I have to be in a position to intelligently respond to the news media.

The letter, a copy of which is submitted, clearly showed the District Director's dependency on the National Office for any actions to be taken concerning public disclosure.

Apparently, the fact that such documents had been made available in other parts of the country was unknown to the Hawaii District Director. It is our contention that were the National Office more concerned with the uniform administration of the Freedom of Information Act, the Hawaii District Director could have been spared a time consuming and perhaps awkward predicament.

This wide variance among IRS offices in handling Freedom of Information matters became more evident during an incident which occurred less than one week ago.

The above, along with the results of Freedom's recent survey of availability of District IRS Office telephone directories (which has already been submitted to the Subcommittee) has given Freedom representatives a first hand view of the alarmingly high inconsistency in IRS's administration of the Freedom of Information Act. We feel, however, that efforts to examine this inconsistency should be directed primarily at the National Office of the Internal Revenue Service.

Throughout our inquiries Freedom has detected a fear on the part of IRS employees in the field to comply with the Freedom of Information Act—a fear of reprisals, should a released document result in a critical newspaper article or Congressional attention.

For many years this fear has been intentionally fostered by the National Office of IRS. We have attached a number of IRS documents called "Information Notices" in which IRS employees are strictly warned by officials of the National Office that unauthorized disclosure of IRS documents could result in disciplinary action and even criminal liability. The dates of these Information Notices run from 1960 to 1971. Prevalent in all of them is the National Office's preoccupation with maintaining secrecy as well as the continual charge they place on IRS employees to enforce such secrecy.

In short, IRS's long standing violation of the Freedom of Information Act can and should be directly attributed to agency officials in the National Office who have knowingly promoted a working climate for their employees which stresses secrecy and separation from American citizens. It is our belief that making this known to Congress is the first step toward rectifying the situation.

We are honored to have the opportunity to assist your Committee and we hope that the foregoing proves useful to you and your staff in examining this very important issue.

Respectfully Submitted,

LAWRENCE E. WILBER,  
*Contributing Editor.*

SENATOR KENNEDY. So two IRS people came to this group inquiring about this document marked "Official Use Only" that had already been declassified by IRS 2 years ago. Not only does this suggest that perhaps the left hand of the IRS doesn't know what the right hand is doing, but it also conveys a general attitude of the IRS which would deter people from attempting to obtain information that is actually public.

Mrs. LONG. This has not been unusual. We have had several occasions where we furnished statistical material to various news media that we have gotten through requests under the Freedom of Information Act and the next thing the news media know, they call us up and say "We got a couple of IRS agents in our office and they want to know where the source of this leak is because we are publishing secret documents."

SENATOR KENNEDY. OK, continue.

#### WHAT HAS IRS TO HIDE?

Mrs. LONG. Now, what has IRS to hide?

No agency has more power over our everyday lives, yet no agency is more secretive about how it conducts our affairs.

We would like to illustrate the importance of public disclosure about the internal dealings of our tax agency by reviewing a number of IRS internal documents—documents which IRS sought and seeks to withhold from us because of the serious questions they raise about the manner in which IRS administers our tax laws.

With \$23 billion at stake, the stamp of secrecy is presently being used by the IRS to cover up serious failings in our tax system.

According to documents we have obtained, again marked "For Official IRS Use Only," preliminary estimates from the most recent study under IRS's taxpayer compliance measurement program of a scientific sample of returns filed by individuals in 1972 indicate that had all returns filed been audited last year, almost half would have failed to satisfy IRS agents.

The range of disagreement between how IRS and the average taxpayer would calculate his tax is far from small. Indeed, the average

disagreement IRS figures indicate would involve almost a 50-percent increase in tax over that already paid—or about \$23 billion additional in taxes from individuals.

The same internal IRS statistics indicate that while the range of difference between IRS and the average taxpayer is vast, the more important question of who is right—the taxpayer or the IRS agent—has no simple answer. The range of differences among IRS's own agents was nearly as great as between the taxpayer and the IRS itself.

Senator KENNEDY. Now let's see if I understand. This study indicates that within the IRS almost half of the returns would have failed to satisfy IRS agents, is that what you are suggesting?

Mrs. LONG. Yes, that is true. And that is not counting things that a computer would pick up mathematically, all of those little things. This would be if the return were subjected to an audit.

Senator KENNEDY. And the amount of money that is being lost is extremely significant. I mean, here we are talking about the figure of \$23 billion.

Mrs. LONG. Yes.

Senator KENNEDY. I don't know whether we have to really dwell whether it is \$21 billion or \$25 billion or \$15 billion, but what we are talking about is tens of billions of dollars that are actually involved. I think you can say in a very conservative way that this deficit is going to have to be made up by other people. For the most part I think the clear cut result is that it is being made up by probably blue collar people that don't have the benefit of various loopholes.

Mr. CAPLIN. I don't believe they are referring to that as a loophole. Senator, I think they are saying under existing law where it is clearly subject to tax, somebody is not paying the tax. It is a question of really policing.

Mrs. LONG. But the second part of it—

Senator KENNEDY. Let's take the first part of it. Why is that?

Mrs. LONG. But you have termed the \$23 billion as taxes that should be coming into our Government that are escaping. That assumes of course, which one would think would be a logical assumption, that what the IRS agent says is correct, is in fact the right calculation. But indeed IRS statistics indicate that those IRS agents can't agree amongst themselves and, for instance, we have prepared here I think a copy—

Senator KENNEDY. That is right. We are going to get to this. You are very familiar with this but I think it is just important that we have those who read the record, as well as myself, understand to some extent this.

So you have at least half of the agents that would disagree that there is a failure to pay that amount of money, the approximately \$23 billion on their returns, and then, secondly, you have the point that about 75 percent of the agents themselves cannot agree as to whether they ought to pay or not pay; is that correct?

Mrs. LONG. Yes, there is just a great range of differential. If for instance you just look at fairly simple returns, those between \$10,000 and \$50,000 which just involve wages and salaries, and you sent one group of agents out from one district and you audited all of the returns

and then you sent out another group of agents from a different district to audit, they would have such disparities. The first group might find 20 percent passed and all the rest owed more taxes and yet the second group would say, well, 77 percent are OK to us. And when you are talking about an amount of \$23 billion or an average increase in taxes of about 50 percent, it means an awful lot to every taxpayer what region he lives in and who his agent is.

And we don't think that is right to have this kind of disparity.

Senator KENNEDY. Well, we want to welcome Senator Thurmond here. Now, do I understand then that you have really two practical implications: you have first of all a confusion amongst the taxpayers themselves—they may be honest and they may want to comply with whatever the laws are, with whatever the regulations are, but they are confused as to exactly what they ought to be paying?

Mrs. LONG. Yes.

Senator KENNEDY. And second, you have the practical implication where there is revenue being lost that is going to have to be made up from some other sources. And this is currently of the magnitude of tens of billions of dollars?

Mrs. LONG. Yes, and this doesn't involve the corporate area, which of course, if IRS statistics are correct are even of much greater magnitude.

Senator KENNEDY. All right, let's go into some of those.

Mrs. LONG. I think one point that we in our own personal mind feel is important is if you take tax returns to say 10 tax accountants and they come up and say you owe \$1,000 in taxes, and then you took it to say 10 auditors for the Internal Revenue Service and they said you owe \$1,500 in taxes, now is one right and the other wrong? You see what I am saying? We are saying if the interpretation or calibration of the tax law by the Internal Revenue Service gives it a whole different perspective than what the average tax accountants give it, then the people who are auditing it are actually paying this extra tax and this \$23 billion is actually an extra tax on the people who are audited.

Senator KENNEDY. But another point, and we are going to get into this disparity to show it, is we can't even have the study that was done within the Internal Revenue Service—

Mrs. LONG. That is right.

Senator KENNEDY. That shows this inconsistency. I would think we will have to have the committee request it.

Mrs. LONG. The GAO requested this study and they were denied access, requested it for just the statistics.

Mr. LONG. We believe this type of statistics, and this is our interpretation and we would say you can question it, but we believe that if you turned this over to, say, 10 different people that are experts in analyzing taxes and let them state their opinions to the Congress, and I think it will get some very interesting answers.

Mrs. LONG. One comment about the TCMP studies. I think Mortimer Caplin should take some credit for having started this program. It was designed, it is our understanding, back when he was Commissioner to provide a means for measuring IRS performance to see how well our tax system was working and indeed it has just been kept under wraps and not been used for that.

**Mr. CAPLIN.** The TCMP is the taxpayer compliance measurement program. Essentially returns are selected scientifically of different groupings of taxpayers nationwide. We are trying to get a profile on the taxpayer on how well is he doing in complying with the law. And it is used for many reasons. One, it is used in terms of programming the computer on what to look for and also what returns to examine. And the Service thinks very highly of it.

One of the side effects is that if a return is selected, you are given a very detailed examination.

I must confessed I was picked up in the TCMP net a couple of years ago and it was poetic justice I suppose. They examined every item, every transaction.

**Senator KENNEDY.** Let's get into some of these disparities. You have some charts.

**Mrs. LONG.** Yes, this chart here is directly prepared from the IRS statistics we obtained and, for example, it shows that if IRS agents were to audit all individuals reporting between \$10,000 and \$50,000 from wages and salaries, in other words eliminating all of the questions about someone who is operating a business or getting business income, the percentage of returns that would be approved as compiled by IRS varied from 77 percent recorded by IRS agents assigned to the Parkersburg, W. Va. district, to only 20 percent reported by agents assigned to the Buffalo, N.Y. area.

These differences mean that taxpayers are asked to pay differing amounts of tax depending upon where they happen to reside—with the average tax adjustment IRS ask amounting to a 50-percent increase in tax, such differences are hardly inconsequential to the taxpayers involved.

**Mr. LONG.** Another area we could go into are the seizures. Well, the IRS is now refusing to release to us its statistics on the frequency of levies and seizures. Last year, earlier data indicate that almost a million levies and seizures a year are conducted by IRS collection officers.

The IRS says, further, that with nearly a million levies and seizures a year that such extreme steps are only used as a last resort. But statistics indicate some districts employ seizures on 15 percent of their cases while other districts use seizures 60 percent of the time.

This is a very important thing to people in the lower level, little taxpayers. They come in and take his salary check, they come in and take his bank account, they can take his automobile, and in some areas they give him a time payment plan but there is practically no instructions to staff on being consistent from one end of the Service to the other. I think this is one area that should be reviewed.

**Senator KENNEDY.** Well now, as I understand your statistics, they show that if you and your brother are unable to pay your taxes, for example, and you live and own property in New York and your brother lives and owns property in Connecticut, the chances of your property being seized in New York are three times higher than your brother's chances in Connecticut?

**Mrs. LONG.** Yes, and it just seems inexplicable to us. And furthermore these statistics are IRS internal statistics and since last September they have been refusing to release more current ones and we just think that should be made public.

Senator KENNEDY. What about that, Mr. Caplin? How is the disparity of seizures justified? Obviously all of this impacts those in the lower income groups.

Mr. CAPLIN. Again this relates to just differences in human beings nationwide. I suppose you would probably be getting essentially correct results although it would depend on what side of the bed he may have gotten out of that particular morning, but when you have thousands of different human beings going out and making this individual judgment in terms of whether a taxpayer is cooperating and whether the revenue is going to be jeopardized if you do nothing, you are going to get these disparities. Coupled with that is the type of supervisor you have: what does the district director in that region say.

Senator KENNEDY. Should there be more uniformity?

Mr. CAPLIN. Absolutely because I just think this whole system cries out for the same treatment in California and Florida that you get here in the District of Columbia. And I think the Service makes an effort to do that. They do hold schools and they send people out on visitations and have the Inspections Service trying to do this, but it is just a constant battle. And again I think this is something the Service might well report to you on.

Senator KENNEDY. I would think obviously unless we have the information that shows the disparity, it is going to be awfully difficult to expect the IRS to move ahead and compound regulations to eliminate it. And you are the one who really demonstrate these types of disparities do exist. OK.

Mr. LONG. Well our main—

Senator KENNEDY. I am going to give you just a final few minutes, Mr. and Mrs. Long.

Mr. LONG. Why don't we just say a word about sensitive cases?

#### SENSITIVE CASES

The sensitive case program started about 15 years ago and will just ad lib on it, Senator, that it was designed originally so that if some official, like when Mr. Caplin was Commissioner, if there was some case where somebody was in a tax problem and he was confronted with some reporters, the Commissioner would know something about what was going on. The sensitive case program over a 15-year period started out as just an information system for top officials but now it has grown in 15 years so that the National Office now directs it, has forms and staff and everything else, and even it is computerized so that it is a system that is unknown to the public. The average person that is a sensitive case like our, is in the same situation we are in. There is just a stack of 4341 forms on us. Every time you turn around they make a form out on us. We think that this system should be made public. We think that Congress should realize what is going on. We also realize that there are directives on this and we have in our written testimony listed how the White House is now involved in it. So I think we covered that real well.

There was a case in Portland, Ore.—

Mrs. LONG. Just very recently U.S. district court judge threw out a case in part on the grounds that the prosecution was brought be-

cause the person was a sensitive case and he said that was patently unconstitutional to use different criteria for different people.

Senator KENNEDY. I suppose, as I understand what you have said, you have different levels of employees working on different individual cases, and I suppose their justification is that some cases are more sensitive than others. The basic question, though, comes down to whether everybody ought to be treated the same way.

Mrs. LONG. Yes.

Mr. CAPLIN. Another part of that is what do you do with that particular list? Now as the Longs have pointed out, in the beginning it was to keep the people in Washington informed. You get off a plane in Texas and they ask what about Mr. so and so and you never heard about him or maybe it is some political figure. And it was thought the administration was to keep the top people informed.

Now, after the Commissioner had been informed, he in turn would pass this on to the Under Secretary of the Treasury. And he would be very selective in advising the Secretary and perhaps in some extreme occasions the Secretary might see fit to report to the President on some aspects. But normally just to keep it with the Commissioner and the Under Secretary, it would just be a couple of copies of this report.

I understand from the Longs' written testimony this thing has spalled out quite a bit and has become one of the best sellers. And I think this is very unfortunate because it does raise the question are you treating everybody the same if you are auditing a high official and you are auditing a little man, then the same standards ought to apply.

Mrs. LONG. I think that concludes our testimony. We appreciate this opportunity to testify.

Senator KENNEDY. Well, we will come back to you, Mr. and Mrs. Long. As I understand it, when you first tried to get information from the IRS, you called the main office in Washington and were told you would have to come to get the information to the reading room here. The reading room would not tell you over the phone whether the information you wanted was available or not available to the public. Then, after you traveled 3,000 miles from your home, you tried to talk to the IRS employees regarding the information but no one would talk to you. You tried to get IRS indexes in order to identify your requests, and were not allowed access to them. And then when you finally managed to prove that what you wanted did exist, you were told that you were not allowed to see it. And finally after being charged an exorbitant search fee, you were allowed to see some of it, but you couldn't copy it. And when you were allowed to copy the information that you were first told did not exist, you found that the information had either been superseded by a different document or had been changed altogether, and that according to the process of making the request under the Freedom of Information Act, you would have to start all over again?

Mrs. LONG. And throw in a couple of court suits in between because we didn't get it until we had a couple of court suits so I think that would be accurate.

Senator KENNEDY. Thank you.

[The statement of Mr. and Mrs. Long in full follows:]

STATEMENT BEFORE THE SENATE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND  
PROCEDURE, APRIL 1, 1974

Mr. Chairman and members of the subcommittee: we are Phil and Sue Long of 4885 Lakehurst Lane, Bellevue, Washington. We appreciate being asked to appear today and discuss some of our experiences and difficulties in obtaining information from the Internal Revenue Service under the Freedom of Information Act. In doing so, we would also like to illustrate the importance of public disclosure about the internal dealings of our tax agency by reviewing with you a number of IRS internal documents—documents which IRS sought and seeks to withhold from us because of the serious questions they raise about the manner in which IRS administers our tax laws.

THE "SECRECY MANIA" INSIDE IRS

Our experiences with trying to obtain information from the IRS date back to 1969, now over four years ago. The IRS placed every roadblock in our path—from noncooperation and refusals to lies and intimidation. For two years we were totally unsuccessful at budging even one shred of in-house material out of the IRS until we filed suit under the FOI Act. The decision of the court in the fall of 1972 ordering IRS to release in-house manuals and audit statistics, however, came three years after we had first sought the information.

Even more discouraging is that irrespective of a growing number of unfavorable court decisions like ours against the IRS, officials' attitudes remain little changed. Secrecy remains the rule, not the exception.

We would like to discuss today, in particular, our difficulties in obtaining access to: (1) IRS secret administrative law, (2) IRS internal operating statistics, (3) IRS scientific studies on our tax system, and (4) IRS indexes to its internal document system.

*IRS secret administrative law*

The Freedom of Information Act first and foremost was hailed upon its passage as forever banishing the evils of secret administrative law. As the Senate Report of this Subcommittee on the Act noted, this law will:

"\* \* \* afford the private citizen the essential information to enable him to deal effectively and knowledgeably with the Federal agencies. This change will prevent a citizen from losing a controversy with an agency because of some obscure and hidden order or opinion which the agency knows about but which has been unavailable to the citizen simply because he had no way in which to discover it."

It is particularly appropriate to begin with the availability of IRS's "secret" administrative law, for this is where we really began over four years ago when IRS refused to tell us the guidelines it was following after a tax audit of our small business.

To gain perspective it is helpful to reread the testimony of the Treasury Department during 1963, 1964 and 1965 hearings on the then proposed freedom of information bill. Again and again, the complaint was made that to pass this law would require the release of hundreds of thousands of IRS secret rulings, millions of tax compromises and determinations, and volume upon volume of administrative staff manuals, technical guidelines and interpretations--disclosures IRS and the Treasury Department vehemently opposed.

IRS's position did not prevail and these requirements became a reality with the passage of the Freedom of Information Act. However, what IRS failed to prevent through legislation, IRS now seeks to prevent through every subterfuge it can devise. Today, as before, IRS refuses to make a single document available under the requirements of 5 U.S.C. 552(a) (2)—the FOI requirements mandating the release of "secret" administrative law.

With appropriate bureaucratic doublespeak, IRS merely announced that it issued no orders or opinions, had no statements of policy or interpretations, distributed no administrative staff manuals or instructions to staff that affect a member of the public. All those agency records embodying IRS decisions and secret administrative law that IRS had complained would have to be released should the law be passed, suddenly were said to be nonexistent.

Public pronouncements aside, within the agency such records continued to be accumulated, issued and distributed shielded from public view with the stamp



"official use only." In the first five years after the FOI Act passed, for example, IRS's audit division examined and made findings of the "correct" tax liability on 12.4 million tax returns and requested \$15.8 billion in additional taxes. Not one of these orders or opinions is made publicly available under any provision of the FOI Act.

During this same five year period, hundreds of thousands of cases were brought before IRS administrative review hearings for redetermination of the IRS auditors' findings. The hearing examiners at the district conference level heard 200,014 cases during this period and issued an order and opinion in each case. In addition, a second level of administrative review before the regional IRS appellate division heard 164,924 cases involving \$8.3 billion in contested taxes and issued an order and opinion in each case.<sup>1</sup>

None of these IRS opinion and orders is made available to the public by IRS. Indeed, just last month we received a letter dated February 28, 1974, from IRS Commissioner Donald Alexander upholding the agency's denial to even those opinions handed down in so-called "pilot cases" on pattern issues where IRS admits the determination of regional appeals officer is used by the district appeals officers as the basis for compromising similar issue cases. The grounds cited for denial by the Commissioner: FOI exemptions (b) (3), (b) (4), (b) (5), and (b) (7), found at 5 U.S.C. 552.

Similarly there are millions of orders and opinions issued by the Collection Division of IRS—many involving judgments that determine whether someone loses his job due to IRS garnishment of his pay check or whether a small business is forced to liquidate. During the first five years after the FOI Act passed, IRS without court order seized the bank accounts, pay checks, house, car, business and other assets from 4,362,169 taxpayers. Yet over eight million other taxpayers were granted additional time to pay their taxes, allowed to work out a part-payment or time-payment plan, or the account was written off. Their assets were not seized. Since IRS determinations are not made available, the parties involved have no way of determining if they are getting the same treatment as someone else received. Not even the current statistics involving these cases is now made available to the public.

During this same five year period IRS from Washington issued 162,839 private rulings. The passage of the FOI Act had no impact on IRS policies of publishing a select few (about 2 percent) while withholding the remaining 98 percent from public scrutiny, even though this practice has been held by the courts to violate the FOI Act.<sup>2</sup> This is not even to mention the additional hundreds of thousands of "determination letters" issued taxpayers from local offices and withheld from the general public.

Or take the instructions IRS issues to its staff. Until recently, for example, IRS withheld its entire Internal Revenue Manual—a 40,000 page, 32 foot set of looseleaf volumes which IRS refers to as its "single official compilation of agency policies and procedures." In the face of two adverse court decisions and increasing congressional pressure, IRS Commissioner Johnnie Walters promised that all 32 feet of the manual (with the deletion of a few tolerance criteria) would be released to the public by March 31 of last year.

It is now precisely a year later and by volume only about one-third of it has been released, and even that is yet to be available in district offices to a taxpayer who seeks it. One must generally now write or come to Washington, D.C. to gain access.

But even this limited disclosure does not mark a real departure in IRS position. Recently, IRS Assistant Commissioner John Hanlon wrote us from Washington: "We do not consider \* \* \* [Internal Revenue Manual materials] to be subject to 5 U.S.C. 552(a) (2) inasmuch as they do not affect a member of the public\* \* \*."

Indeed, it is our understanding that IRS further contends that the entire manual is exempt from disclosure under FOI exemptions (b) (2) and (b) (5), and therefore it is only a matter of grace on IRS's part that it is not invoking these exemptions—a waiver that IRS officials have been quick to add does not preclude them from invoking these exemptions at some future date. What is given by "grace" can be taken away tomorrow by the whim of some IRS official as we have discovered to our sorrow in the past. With this foundation the public's

<sup>1</sup> Court decisions in tax cases, in contrast, amount to only 1 percent as many as the number of IRS determinations on administrative appeals.

<sup>2</sup> The few private rulings that IRS has published are published under a provision of the law which preceded the FOI Act. The FOI law incorporated this publishing requirement under section (a) (1) (C) of 5 U.S.C. 552.

present access to limited portions of the manual is tenuous indeed—a condition that is increasingly apparent from IRS recent actions.

For example, what were to be a few tolerances to be removed have grown to encompass a larger and larger segment, while other of the more interesting material has been suddenly declared obsolete or radically abridged when a new change sheet is issued. Part VIII of the Manual which through court action we obtained in its entirety 18 months ago has now shrunk to only one-third of its former volume, and IRS is now even denying us access to some of that.

A special Part VIII "Tolerance and Criteria Handbook" has been recently set up by IRS into which IRS is moving material of the nature that was formerly made available to us through our FOI court suit. Among this material are secret guidelines for the administrative compromise of the taxes of the refractory clay producers industry which for some reason IRS doesn't want the public to see.

From another part of the Manual, IRS is withholding its prime issue guidelines which spell out in detail for IRS agents and appeals officers, the IRS position on selected tax code provisions. Standards to be considered by IRS in disciplining its employees for improper treatment of taxpayers remains hidden.

But another example is IRS refusal to make available from its Manual a secret directive entitled "Special Services Staff Activities (MS51G-96)—a directive issued at or about the same time a second directive (MS51G-97) was publicly issued by Commissioner Alexander supposedly abolishing the group after strong public criticism surfaced over its activities. (This is the unit contended by some to have been set up secretly by IRS to harass particular activist organizations.)

All directives issued by regional and district offices which were formerly made available to us as part of the Internal Revenue Manual are now being withheld from us unless we pay a ransom. (RC and DIR-Memorandums) Appeals to the Commissioners have been to no avail.

The IRS Manual, however, is but one of many sets of directives regularly issued to IRS staff which vitally affects the public, but which IRS refuses to release. Among these is IRS's "Audit Coordination Digest" series—a National Office publication "issued as a means of obtaining national uniformity of audit activity" by summarizing "recent exception and advisory letters and other materials developed from the review operations of regional officers as well as studies and analyses of audit activities conducted by the National Office." (IRM 4821) Yet IRS publishes and distributes to its field agents 18,700 copies of every issue—10 times the number of copies it distributes internally of even its own regulations.

Or take IRS "Technical Guidance Letters" formerly issued to regional officials hearing taxpayer appeals of IRS auditors' findings. After a ten month wait, Commissioner Donald Alexander on February 4, 1974, refused to release them to us, overruling a division within IRS which had recommended their release.

Another set of staff directives is contained in the IRS "Review Digest" series which late last January IRS Assistant Commissioner Hanlon refused to make available citing FOI exemption (b) (5). As we pointed out in our appeal to the Commissioner of February 18, 1974 which remains unanswered:

"Mr. Hanlon's letter concedes that the "Review Digest contains information on technical and procedural errors and audit techniques, among other things." It is also evident that the Review Digest, by its title, is prepared by regional offices of your agency for distribution to employees in district offices under their jurisdiction to communicate technical and procedural errors that have occurred in the past to prevent their reoccurrence, and audit procedures ("techniques") to be followed. Such materials are the very opposite of the type protected under (b) (5).

Earlier Acting Commissioner Raymond Harless on May 25, 1973, denied our request to see the district "Review Digest" series of a similar nature.

Recently on February 4, 1974, our request to examine and copy "Regional Visitation Reports" which according to IRS "communicate to district officials the significant managerial findings and observations of the regional case management program" was also denied. IRS cited exemptions (b) (2), (b) (3), (b) (4), (b) (5), and (b) (6).

Earlier the Assistant Commissioner and the Commissioner denied our request and appeals for access to IRS's "Actions on Decisions" series which revenue agents are instructed during their first training course to inspect to find out Service position on court holdings.

Obviously these and many more documents are the very essence of the type of "secret" administrative law Congress had in mind when it passed the Free-

dom of Information Act requiring them to henceforth be open to public views. IRS prefers to openly defy the law, knowing full well that a taxpayer who needs access to these materials today can ill afford to take the agency to court and then wait two years to look at documents he needs NOW to assist him in dealing with the agency.

### *IRS internal operating statistics*

Next to IRS internal policies and procedures, there is no better source for separating fact from fiction about how IRS really operates than its own internal operating statistics. Nor is there any area of government records where the public right of access is more clearly defined.

Yet after four years of effort, including a successful court suit against IRS withholding of audit statistics, we find ourselves back to almost where we started with the refusal by IRS to make its current operating statistics available. The statistics we fought over in our court suit covering the period 1969, are now being withheld from us for the current period—along with other audit, appeals, and collection data.

It might be useful by way of background to give you a thumbnail sketch of IRS policies, past and present, in this area. In doing so it will also give you an idea of the typical experiences we have had when seeking information from our tax agency.

*IRS past policies.*—After the FOI Act passed, IRS internal operating statistics continued to be stamped "official use only." When we first made inquiries of IRS officials in Washington, D.C., in March of 1970 they denied they even compiled any statistics outside those summary figures published in the Commissioner's Annual Report. We persisted, and later asked first orally and then in writing to speak with someone in the National Office having any knowledge of what statistics were compiled. We were refused permission from the Commissioner on down to speak with anyone having knowledge in this area.

Next we sought to see if indexes might exist listing IRS statistical reports. An IRS official—indeed the Disclosure Chief himself—claimed they had none, though we later learned the very indexes we sought were sitting on his office shelf. Next we asked to see blank copies of the reporting forms used to gather figures for tables published in IRS's Annual Report. We also requested, again in writing, to see the compilations themselves from which specified annual report summaries were taken. These requests too were denied. Even when we limited our request to a copy of a single blank form, it too was summarily refused and appeals to the Commissioner produced nothing.

By this time a year and a half had passed, consumed by these roadblocks IRS had constructed. Finally through no help from the IRS we obtained through the backdoor the identity of certain IRS reports and made a specific request for one concerning audit operations. It too was denied along with our appeal citing (b) (2) and (b) (5). In November of 1971 we filed suit. Eventually in the fall of 1972 IRS was forced to release this report to us under court order.

Then followed a period of less than a year when further requests for IRS statistics met with some success, although IRS continued to bar access to many. Last spring IRS Commissioner Johnnie Walters conceded in open testimony before the Senate Appropriations subcommittee that IRS had no legal basis for withholding its operating statistics. He added:

"Initially we resisted requested for internal operating statistics, but we now are granting requests for statistical material \* \* \*."

*New developments: Secrecy again reigns.*—But then suddenly without warning or explanation, last fall the wall of secrecy again descended over even the few enforcement statistics we had previously managed to pry loose from the IRS.

Statistics we had been routinely requesting and receiving, suddenly stopped coming. Our written requests were no longer acknowledged or answered by Assistant Commissioner Hanlon, and our letters of appeal to the new Commissioner, Donald Alexander, went unanswered.

No longer available, for example, are IRS Quarterly Statistical Reports. The history of the "now you see it, now you don't" policy on this report series is a tale in itself. For decades the issues of this report arrived in the Treasury Department Library, a public facility, and were placed on the shelf for all to see. That is, until March of 1972 when we filed an affidavit in our court FOI suit noting their availability there. Immediately IRS attorneys raided the library and seized the reports removing them from the library shelves.

It was over a year before these volumes resurfaced again, and only after our winning one successful court fight to release similar audit data and public and congressional pressure. A new public reading room in the IRS National Office was opened with great fanfare, and these quarterly reports along with other statistics were placed on the open shelf. Again they were made freely available to the public.

Their availability, however, was shortlived. Last month when we came to Washington we again found the shelves stripped bare. Last September, we were told, on the order of top IRS management officials the statistics were removed from public view. Similar statistical reports met the same fate. Indeed, we were refused access to view "The Audit Story" series containing other statistical information although we had a letter from Assistant Commissioner Hanlon formally granting us access. Such authorization was "no longer operative" we were told.

*All requests ignored.*—Since IRS policies changed last fall, we have made many requests to IRS for statistics on their audit, appeals and collection activities without success. Indeed we had written on September 26, 1973, requesting xerox copies of six tables in the fiscal 1973 issue of the Quarterly Statistical Report (Audit), having earlier been refused permission to purchase a printed copy. On December 17, 1973, having received no response, we wrote the Commissioner and again heard nothing.

To cite another example, on September 11, 1973, we wrote IRS requesting to see audit production statistics described in Chapter 500 of the Audit Reports Handbook (IRM 4810), statistics which appeared to support the existence of an informal "quota" system for IRS agents. Our request was not even acknowledged. On January 13, 1974, we appealed in writing to Commissioner Alexander, and still we have heard nothing.

Also last September 11 we requested copies of collection statistics from report NO-ACTS:PRA-95 for fiscal 1973 that would give the number of seizures IRS makes across the country. On December 17, 1973, we appealed to the Commissioner since we had received no response. For awhile we received some indication that the data would be forthcoming after making phone calls to the National Office on January 11, 14, 15, 16, 30, and February 12. Last month, however, we were informally told that our request was being indefinitely held up.

It has been the same story on other requests. Indeed even a request for a xerox of but one page of an audit report has met with total silence now for nearly seven months.

What is perhaps the most discouraging about this matter is that it is inconceivable to us that IRS officials from the Commissioner on down don't know they are breaking the law. They do not respond to our requests for the simple reason that they have no legal basis to cite for justifying their withholding. Yet in total disregard of their prior promises to Congress and a court judgment we obtained on the question, the IRS which expects each one of us to obey the laws is itself openly flaunting the law.

### *IRS scientific studies*

A further area we have sought information on with little success is on the results of scientific studies IRS has conducted on tax compliance and administration. We have been refused permission by Commissioner Donald Alexander, his predecessor Johnnie Walters, as well as officials serving under former Commissioner Randolph Thrower, to examine even indexes to such studies such as the "Register of Internal Revenue Studies" and the "Quarterly Review of Technical Projects."<sup>3</sup>

The grounds IRS has given for denying the indexes as well as the studies themselves is usually exemption (b)(5) of the FOI Act even though the law and court decisions make it plain beyond doubt that this exemption does not authorize the withholding of factual reports and scientific studies. On at least one occasion exemption (b)(7) was used even though data sought was statistical in nature.

While on the one hand refusing to release such studies, IRS frequently relies upon them for making public pronouncements to justify increases asked in their budget, or to recommend changes in the law.

<sup>3</sup> After we requested them originally, IRS announced they were discontinuing publishing both the Register and the Quarterly Review. Though unpublished, the information continues to be compiled, however.

*Budget request.*—On March 24 of 1971, for example, then Commissioner Randolph Thrower went before the House Appropriations Subcommittee requesting a large increase in audit manpower. In justifying this request, the Commissioner cited specific figures they had developed on the effect an increase in audit coverage would have on overall levels of voluntary compliance. When we sought the supporting documentation for the specific figures cited our request was denied, as was our appeal to the Commissioner.

*Regulation of tax preparers.*—Right before April 15 in 1972 scare headlines hit the front pages across the country that an IRS study had shown 97 percent of the returns prepared by tax preparers fraudulent quoting both Treasury Secretary John Connally and IRS Commissioner Johnnie Walters. Indeed the TV evening news carried Treasury Secretary Connally's assertions live.

We immediately wrote IRS in Washington requesting to look at the "study report(s) and tabulations" which had been prepared. IRS flatly refused to furnish us with any information claiming that all the data was exempt as an "investigatory file" under exemption (b) (7) of the FOI Act. We appealed to the Commissioner but the records IRS finally agreed to release from this alleged "investigatory file" was a copy of a public speech by the Commissioner for which we were billed \$9.75.

We later learned indirectly that the study IRS had made was of a small number of tax return preparers selected because IRS already suspected them of fraud and of these IRS had only been able to find what it alleged was fraud in 20, not 97 percent.

*Conflicting stories on tax compliance.*—On June 14, 1972, the Internal Revenue Service was quoted by the Wall Street Journal as singling out small, as contrasted with big, businesses for low tax compliance. Specific figures were cited. Yet a few weeks earlier the Commissioner in a speech had reported just the opposite—that IRS had just uncovered "alarming" fraud and tax avoidance among large corporations. The two announcements if not conflicting were at least confusing.

We wrote the Commissioner asking for supporting documents on the level of corporate tax compliance, but IRS refused to release a shred of evidence on either score.

*Tax nonfilers.*—More recently the U.S. News of September 17, 1973, quoting IRS sources stated: " \* \* \* there are millions of people who don't file tax returns at all. \* \* \* Although no precise estimate is available, one survey aimed only at nonfarm businessmen in 1969 showed that 5.4 percent had failed to file one or more returns for various kinds of taxes." This information conflicted with what we had heard informally from sources within IRS.

Citing the article's 5.4 percent, we wrote Assistant Commissioner Hanlon and asked to examine IRS records giving the number and percent of unfilled returns their study had found by type of return and amount of tax involved, as well as the representativeness of those taxpayers included in the study.

It took over two months before Assistant Commissioner Hanlon responded. While conceding that the figures requested had been compiled, Hanlon asserted: "Since public knowledge of the information contained in these documents would significantly impede or nullify Internal Revenue Service actions in carrying out its responsibility to administer the tax laws, we assert the exemption provided by 5 U.S.C. 552(b) (5) in denying your requests."

Four months ago we appealed this denial to the Commissioner. We pointed out that exemption (b) (5) does not cover factual reports and scientific studies. We further noted that IRS had chosen to release the figures to the U.S. News, and having released the data they could now hardly hide behind claims the information would "impede or nullify IRS actions." To date we have received not even an acknowledgement from the Commissioner on our appeal.

While we could enumerate more examples, we hope the pattern of the above examples makes their common thread plain. IRS releases selective data from a study to further the objectives the agency has, whether those objectives be budgetary increases, legislation giving it more enforcement powers or limiting taxpayers' rights, or just to keep us taxpayers "scared" of having any dealings with the IRS irrespective of how carefully we try to make out our return. By their nature the data released is selective—often so selective as to be misleading if not actually untrue. Yet when asked, IRS refuses to release the supporting documentation for its assertions. Such action is not only without any legal justification, it is in our minds irresponsible and inexcusable behavior.

### *Indexes to IRS records*

Indexes are not a particularly exciting subject, but they are basic to the issue of public access. The first problem we faced, as does anyone, is knowing what to ask for. That is, typically you know what information you want, but you don't know which specific documents it may be contained in. Often you don't know to what extent the agency even compiles that information.

While legally speaking the Freedom of Information Act does not require you to identify each document you want by title and document number, as a practical matter we have had little success in making requests to IRS without one. When we have approached the agency without knowing the specific document number, we are usually given the run around. We are told, "no records exist," or that "the information isn't compiled," or simply "we are unable to locate any records pursuant to your request." Yet often it turns out later that these answers were untrue.

To cite a recent example, we recently received a letter from Assistant Commissioner Hanlon stating that the agency did not compile figures on the number of tax returns filed by income last year. We thought that an amazing statement to come from one's tax collection agency in this computer era. Indeed we were almost positive that IRS was misleading us, and we had a fairly good idea where such information would be found and who in the agency we would ask if we were trying to locate it. However, the second catch is that IRS imposes formally or informally a "gag" rule on its operating employees so that we are refused permission to speak with anyone having direct knowledge of where information is located.

In locating internal agency indexes you run up against the same problems. IRS isn't going to tell you what indexes they maintain, nor are they going to let you speak to anyone who would know. So it has taken us a great deal of time and effort to ferret out just the identity of certain indexes IRS maintains.

For persons who have managed to surmount all the previous hurdles IRS placed in front of them and have the name and number of an index in hand, the IRS has developed a variety of other means to get around giving you access to it. Let us give you some examples.

*The Form 1767 file that didn't exist.*—Every time someone in the National Office wants something printed, they have to make out a formal requisition. Typically they fill out a "Publication Service Requisition," or Form 1767 as it is called. Last November 30 we wrote IRS Assistant Commissioner John Hanlon in Washington, D.C., and requested "authorization to inspect and copy the Form 1767 files."

By January 1, 1974, we still had received no word and so we wrote the Commissioner appealing this continued unlawful withholding. Finally around January 21 we received a letter denying our request on the grounds: "There are no Form 1767 files as such."

Since each Form 1767 is assigned a sequential number and made out in five copies (indeed the fifth copy (Part 5) is referred to as the "control" card), we found IRS's response curious. The next morning we dialed the Operations Manager of the Publishing Services Branch of IRS in Washington, D.C. The office promised to return our call when the Manager returned. No call came and so we called again and reached the Operations Manager who made it clear that she had instructions not to talk to us.

We then called Charles Gibb, Chief of Disclosure Staff, to complain of this "gag" rule. He promised to find out and call us back. No call came the next day so we called again. Finally Mark Farbenblum, Chief of the Freedom of Information Branch of Disclosure Staff, returned our call. In the course of that conversation it developed that files were indeed kept of Form 1767's, the most accessible being those kept of the fifth copy of Form 1767, the control card, which is referred to as the Part 5. When then asked why we had been told no files existed, Mr. Farbenblum replied: "You asked to see the Form 1767 files, if you wanted to see these others you would have to ask for the Part 5 Form 1767 files." This, mind you, is the head of the IRS branch handling all freedom of information requests speaking.

So we again appealed to the Commissioner. Late in February we finally received authorization to see Form 1767 files for fiscal 1972 and 1973. We were refused authorization to see the current fiscal 1974 files on the grounds: "The current control cards may not be inspected since they are required for use by the Publication Branch."

While IRS offered to furnish us with copies of these files without prior inspection, the price tag attached at 10¢ a page could run a thousand dollars or more—a price tag we obviously can't afford. As to why we can't see the original files in the office where they are maintained? The only explanation we received was that the people there didn't want us in their office.

*Just looking is expensive.*—A similar experience occurred with our request to see up-to-date lists of manual directives issued by the IRS. After lengthy correspondence we were refused authorization to examine either the "control data sheets" or "the updated list of current manual supplements" even though we offered to examine them in Washington, D.C., during lunch hour in the office they were located. Again IRS said they could make us copies, but the price tag at 10¢ a page would run \$200 for the control data sheets and an additional \$15 for the updated listings.

*"Too broad to be considered."*—IRS's latest ploy in this game has been to simply decline to reply to our requests on the grounds the request is "too broad to be considered." This has been the history of our requests dating back to September of 1973 to examine current indexes to national office reports. Each national report in a series is assigned a permanent sequential number, and we have been able to establish from IRS that there are at least three separate files in existence indexing these reports: (a) A file containing Form 2951's (a requisition or "report clearance" form), (b) a card file of status cards (one card per report), and (c) an informal card file used to assign a number to each report. But we are told first by Disclosure Chief Charles Gibb and then by Assistant Commissioner John Hanlon that our request to see the file containing Form 2951's, or to see either of the remaining two files "is too broad to be considered."

We are told that if we will only specify a specific report number, they will "consider"—note they don't say grant—a request to see the corresponding Form 2951 or control card, but it is of course the report numbers we want to learn by examining the card or form files. We have appealed to the Commissioner but if experience is any guide he may not respond since IRS doesn't consider a refusal to consider a request as a denial open to review by the Commissioner.

Where in open defiance of the Freedom of Information Act, the IRS mania for secrecy is so deeply instilled in its officials that citizens cannot obtain access to simple indexes surely something needs to be done.

#### WHAT HAS IRS TO HIDE?

The evils of IRS secrecy extend beyond considerations of abstract principles, beyond the mere fact of their breaking the FOI law. The evils of IRS secrecy extend to their impact on the everyday life of each of us. No agency has more power over our everyday lives, yet no agency is more secretive about how it conducts our affairs.

We would like to illustrate the importance of public disclosure about the internal dealings of our tax agency by reviewing a number of IRS internal documents—documents which IRS sought and seeks to withhold from us because of the serious questions they raise about the manner in which IRS administers our tax laws.

#### *Secrecy coverup for tax administration failures*

The stamp of secrecy is presently being used by the IRS to cover up serious failings in our tax administration system. For nearly a decade the blanket of secrecy has been thrown over the results of a multi-million dollar series of scientific studies conducted by the IRS on how well our tax administration system is working because the results found indicate problems so serious that IRS fears to reveal them would undermine taxpayer confidence in the IRS and in our tax system.

According to documents we have obtained again marked "For Official IRS Use Only," preliminary estimates from the most recent study under IRS's Taxpayer Compliance Measurement Program of a scientific sample of returns filed by individuals in 1972 indicate that had all returns filed been audited last year, almost half (or 48 percent) would have failed to satisfy IRS agents.

The range of disagreement between how IRS and the average taxpayer would calculate his tax is far from small. Indeed, the average disagreement IRS figures indicate would involve almost a 50 percent increase in tax over that already paid—or about 23 billion additional in taxes from individuals.

These same internal IRS statistics indicate that while the range of difference between IRS and the average taxpayer is vast, the more important question

of who is right—the taxpayer or the IRS agent—has no simple answer. The range of differences among IRS's own agents was nearly as great as between the taxpayer and the IRS itself.

*Sharp differences reflect differing IRS standards.*—While we have only one federal tax law, the standards adopted by IRS districts across the country in applying that law vary sharply. Even on fairly simple returns, IRS findings showed the differences among IRS agents in different districts profoundly disturbing.

For example, were IRS agents to audit all individuals reporting between \$10,000 and \$50,000 income chiefly from wages and salaries (excluding those receiving business or professional income), the percentage of returns that would be approved as filed varied from 77 percent recorded by IRS agents assigned to the Providence, West Virginia district to only 20 percent reported by agents assigned to the Buffalo, New York area.

There was no pattern by type of district (rural, metropolitan) or region. In California agents in the San Francisco district passed 53 percent of all returns while those in the adjacent Los Angeles district found only 26 percent up to standard. Such differences add up to large differences between taxes IRS requests after audit from citizens of similar circumstances in the two areas.

As Figure 1 and Table 1 graphically indicate such disparities as that found between the San Francisco and Los Angeles areas were common. While agents in Hartford, Connecticut, passed 50 percent of returns in the \$10,000-\$50,000 bracket, across the border in New York IRS agents OK'd only 33 percent in the Manhattan district, 29 percent in the Albany district, and only 20 percent in the Buffalo district. Wyoming revenue agents reported finding errors on all but 20 percent of the returns they examined in this income bracket, neighboring Montana agents found no errors on 65 percent of their returns. Again these differences mean that taxpayers are asked to pay differing amounts of tax depending upon where they happen to reside—with the average tax adjustment IRS asks amounting to a 50 percent increase in tax, such differences are hardly inconsequential to the taxpayers involved.

*Major overhaul called for?*—However one examines these IRS findings, a major revamping of our tax administration system seems called for.

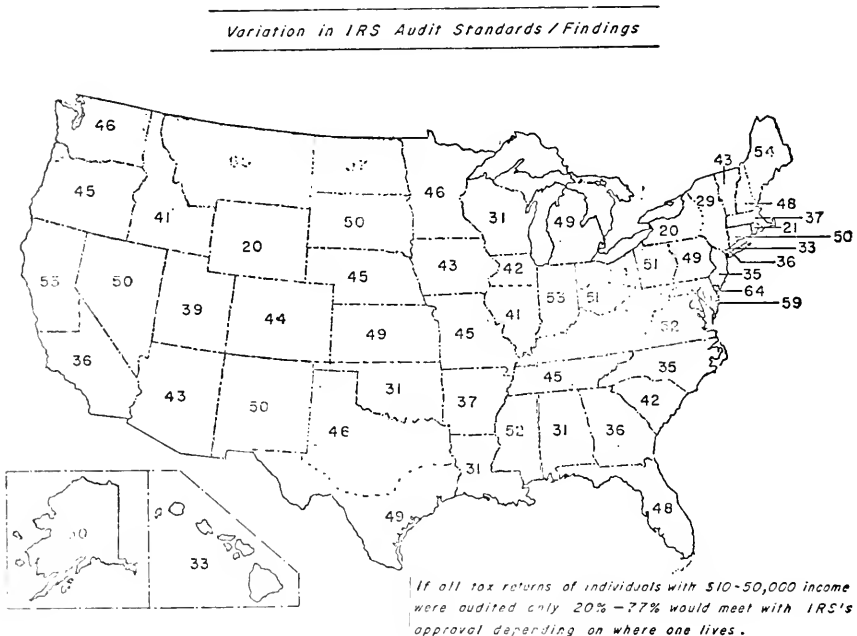


FIGURE 1



TABLE 1.—If all tax returns of individuals with \$10,000–50,000 income were audited only the following percentage would meet with IRS's approval

[By residence in descending order]

District	Percent without error	District	Percent without error
Parkersburg	77	Portland	45
Louisville	66	St. Louis	45
Helena	66	Denver	44
Wilmington	64	Des Moines	43
Baltimore	59	Burlington	43
Cleveland	58	Phoenix	43
Fargo	59	Columbia	42
Augusta	54	Chicago	42
San Francisco	53	Boise	41
Indianapolis	53	Springfield	41
Jackson	52	Salt Lake City	39
Richmond	52	Boston	37
Pittsburgh	51	Little Rock	37
Cincinnati	51	Brooklyn	36
Aberdeen	50	Los Angeles	36
Albuquerque	50	Atlanta	36
Anchorage	50	Greensboro	35
Reno	50	Newark	35
Hartford	50	Manhattan	33
Austin	49	Honolulu	33
Detroit	49	Birmingham	31
Philadelphia	49	Oklahoma City	31
Jacksonville	48	Milwaukee	31
Portsmouth	48	New Orleans	31
St. Paul	46	Albany	29
Dallas	46	Providence	21
Seattle	46	Cheyenne	20
Omaha	45	Buffalo	20
Nashville	45		

Source: Taxpayer compliance measurement program, phase III, cycle 4 (based upon a scientific sample of returns audited during fiscal 1973).

If, on the one hand, we assume that IRS agents even with their conflicting answers figured the right amount of tax in reporting what amounts to half the returns filed by individuals incorrect and a 23 billion dollar revenue gap then it seems clear that our present tax system is not working. Either because of ignorance of the law or the law's complexities—except in a small proportion of cases IRS found tax fraud was not responsible—even the most conscientious and well-intentioned taxpayer even with the aid of experienced tax accounts can't make out his tax return "correctly" and have better than a 50–50 chance of having it pass inspection at audit time. Such a conclusion would point to the need of a serious overhaul of taxpayer education and assistance programs conducted by IRS, and indeed an overhaul of the complexity in the tax laws.

Yet, on the other hand, if we focus our attention on the disparity among IRS agents' findings, the conclusion we apparently must draw is that IRS's own audit program must be revamped for there is hardly any fairness in an audit program whose claims for added taxes from individual audited taxpayers are so tenuous that even IRS's own agents cannot agree among themselves. Such a system works a special hardship on the small taxpayer and businessman who have neither the resources nor the expertise to challenge IRS findings and therefore end up paying whether or not they in fact owe the additional tax.

Secrecy in this instance has been used by the IRS to shield itself from criticism—yet it is the taxpayer and the tax system which has suffered as a result. For these IRS figures however interpreted seem to indicate that nothing short of a major overhaul is required. Such action however is blocked until the detailed findings from these studies are released and IRS is still adamant

about withholding them not only from the public but from Congress and Congress's investigative arm, the General Accounting Office.

#### *Use of IRS seizures varies widely*

Not only has secrecy been used by the Internal Revenue Service to hide scientific findings showing gross inconsistencies in the standards IRS auditors apply, it is also being presently used to deny us access to similar information documenting tremendous differences in the use of levies and seizures by IRS collection officers across the country.

While IRS is now refusing the release to us its statistics on the frequency of levies and seizures last year, earlier data we previously obtained for fiscal 1972 indicate that almost a million levies and seizures a year are conducted by IRS collection officers and the relative frequency of use varies enormously by what district in the country the collection officers come from.

By way of background it is important to note that the IRS has been granted the legal authority to administratively seize almost any taxpayer's assets—one's bank account, salary check, home, car or business. Under the almost blanket grant of power by Congress, such seizures can take place without any effective notice to the taxpayer and without IRS even having to prove that the taxpayer indeed owes more tax.

Few items are legally exempt from levy. It is IRS's practice, for example, to seize an entire paycheck and bank account of a taxpayer leaving he and his family without funds to pay for even basic necessities. To a small businessman, a threatened seizure may mean the loss of his business and his very means of livelihood.

The IRS says, however, that even with nearly a million levies and seizures a year, that such extreme steps are only used as a last resort. Indeed, the collection officer has been granted the discretionary authority to allow a taxpayer to postpone payment, to work out a part payment or time payment plan, or to write off the account in full because of hardship. However, what must be emphasized is that the taxpayer has no rights to these alternative methods of payment. They are left solely at the discretion of IRS and the IRS revenue man assigned the case.

How even handed is this discretionary authority applied? What emerges from IRS's own operating statistics is that whether or not your salary check or bank account, business, home or car, is grabbed by IRS should IRS contend you have fallen behind in your tax payments depends upon where you live and what collection officer is assigned your case.

Variations in the reliance placed upon seizures by IRS collection districts are shown in Figure 2 and Table 2. IRS collection officers, for example, working out of the Albany, New York, district employ seizure methods on approximately 69 percent of the delinquent accounts they handle, while over in neighboring Buffalo, collection officers were successful in making similar collections while relying upon seizures or levies in only 28 percent—a ratio half as great.

Similar differentials exist in all parts of the country. Collection officers in Little Rock, Arkansas, relied upon levies and seizures only 20 percent of the time, while collection officers assigned to work out of the Greensboro, North Carolina office used seizures 46 percent of the time.

Out west seizures by Honolulu IRS personnel ran at a rate of around 21 percent, while in Phoenix, Arizona, the figure rose to 2 percent and in Anchorage, Alaska, reach 47 percent.

To a family or businessman who have been subjected to the hardships imposed by an IRS seizures of their assets, these figures are much more than cold statistics. It seems grossly unfair for IRS to allow such seemingly inexplicable variations to exist on the one hand, and then attempt to hide them under the rug by refusing to release more recent and detailed statistics to the public.

#### *Cursory audits of some?*

IRS is also using secrecy as a convenient excuse to withhold basic policy decisions it has made concerning the future allocation of money and manpower among various competing functions in its operations, along with withholding the facts upon which these decisions have been made. With the public barred from knowledge of the policy decisions, as well as from the facts upon which these policies are predicated, no one can effectively question the agency's priorities.

The IRS has adopted what it refers to as its "Long Range Plan" which sets forth its adopted goals, priorities and projected manpower allocations for the

upcoming five years. Our requests to look at any portion of this or related documents have all been denied. Indeed, IRS is currently withholding from us its adopted work-plan for the current fiscal year. In it, for example, is spelled out its priorities in allocating manpower to the audit of various categories of tax returns in each part of the country.

Yet data we obtained finally only through court order raise important questions about IRS's priorities in assigning manpower to audit small businesses as compared with large corporate returns. (Irrespective of this court decisions, statistics for the current year are being withheld by IRS.)

While the statistics showed that larger corporations have, on average, a higher probability than smaller ones of being audited, it appeared that the audit given large corporations was much more cursory than the one small businesses were given.

Variation in Relative Use of Seizures by IRS

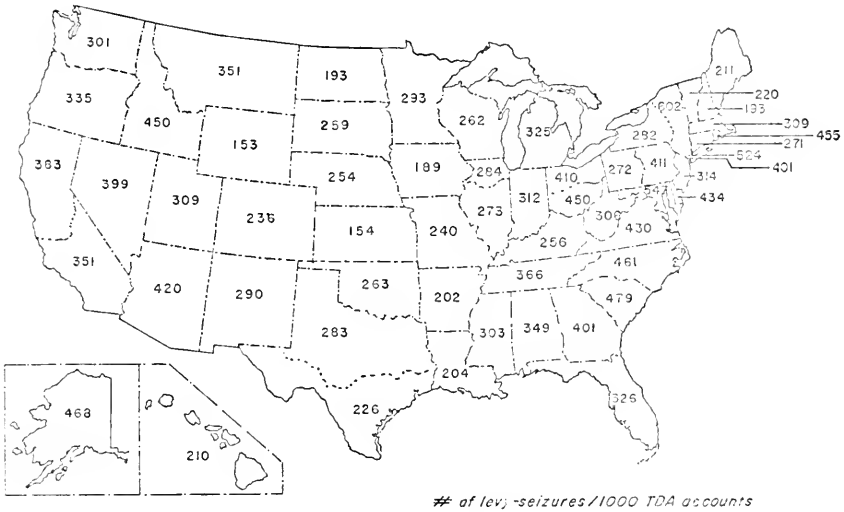


FIGURE 2

TABLE 2.—*Districts in descending relative order of IRS levy and seizures (fiscal 1972)*

<i>District</i>	<i>Ratio of levies-seizures to every 1,000 TDA's</i>	<i>District</i>	<i>Ratio of levies-seizures to every 1,000 TDA's</i>
Albany -----	602	Albuquerque -----	290
Baltimore -----	547	Chicago -----	284
Brooklyn -----	524	Dallas -----	283
Columbia -----	479	Buffalo -----	282
Anchorage -----	468	Springfield -----	273
Greensboro -----	461	Pittsburgh -----	272
Hartford -----	455	Providence -----	271
Boise -----	450	Oklahoma City -----	263
Cincinnati -----	450	Milwaukee -----	262
Wilmington -----	434	Aberdeen -----	259
Richmond -----	430	Louisville -----	256
Phoenix -----	420	Omaha -----	254
Philadelphia -----	411	St. Louis -----	240
Cleveland -----	410	Denver -----	236
Atlanta -----	401	Austin -----	226
Manhattan -----	401	Burlington -----	220
Reno -----	399	Augusta -----	211
San Francisco -----	383	Honolulu -----	210
Nashville -----	366	New Orleans -----	204
Helena -----	351	Little Rock -----	202
Los Angeles -----	351	Fargo -----	193
Birmingham -----	349	Portsmouth -----	193
Portland -----	335	Des Moines -----	189
Jacksonville -----	326	Wichita -----	154
Detroit -----	325	Cheyenne -----	153
Newark -----	314	North-Atlantic Region -----	401
Indianapolis -----	312	Mid-Atlantic Region -----	401
Boston -----	309	Southeast Region -----	382
Salt Lake City -----	309	Western Region -----	359
Parkersburg -----	306	Central Region -----	354
Jackson -----	303	United States -----	346
Seattle -----	301	Midwest Region -----	261
St. Paul -----	293	Southwest Region -----	236

As Figure 3 shows, relative to income received the corporate giants did not appear to receive as close and detailed a scrutiny as did the small business. This data produced through court order showed that in 1969 for every \$100,000 a little business corporation made, its returns were scrutinized an average of more than 67 hours. Yet for every \$100,000 in income the corporate giants made (assets of \$100 million or more), an IRS agent spent considerably less than two hours going over its books and papers.

Yet the books of the little corporations could hardly be said to have been scrutinized more carefully because of higher errors found there. The same statistics indicate that in an hour's time an IRS agent could find \$846 owed the government by the largest corporations, while the same hour of time turned up only \$61 due the government from the small businessman.

Even with revenue considerations aside, on the basis of pure equity it seems unfair to hold a small businessman accountable to stricter standards through more detailed scrutiny of his return than are the standards applied to our largest corporations.

Nor is it fair to our way of thinking for IRS to attempt to avoid answering these hard questions on policy decisions by withholding information which raise those questions from the public.

#### *IRS handling of "sensitive cases"*

The evils of a system of IRS secrecy in its daily operations and policies is perhaps nowhere more evident than in the secret apparatus IRS has erected

in its continuing "sensitive case" program—a program wherein so-called "sensitive cases" are singled out for special handling. The very existence of such a program is an open invitation for abuse, but it has been allowed to flourish and develop for years protected by a curtain of secrecy.

Because of this secrecy and the intransigence of IRS to reveal the full scope of its operations, we have been successful in obtaining only a limited number of internal documents detailing its operations. Some only recently obtained, however, give rise to serious unanswered questions.

What apparently began back in the late 50's as a questionable informal system for appraising IRS officials in Washington of cases involving "sensitive matters" has evolved through the protections afforded by secrecy into a highly organized apparatus—complete with its own reporting forms, security measures, and specially assigned personnel—to enable IRS top officials to secretly influence the tax treatment accorded individuals and groups. Such individuals and groups may be singled out because of their ties to influential political persons or their prominent positions in society on the one hand, or because they support a politically unpopular cause or are publicly critical of the IRS or other governmental bodies.

While the internal IRS documents we have obtained do not deal with actual cases in which this apparatus was used by the IRS, it seems doubtful to us that the "sensitive case" apparatus so carefully developed and expanded over the years and the subject of so frequent directives to the field, has been developed to be other than used, or abused, whichever the case may be.

Indeed, if the directives we have obtained are any indication there are few areas within IRS's operations which are not caught up in this "sensitive case" program—from the issuance of a refund check to the seizure of a taxpayer's assets, from the granting or revoking of tax exemptions to the selection of returns for audit and the findings made, from the selection and prosecution of taxpayers for tax evasion to the programming of Internal Revenue Service computers.<sup>4</sup>

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<sup>4</sup>In the very process of seeking information on IRS operations under the Freedom of Information Act, we found we too had been invidiously and secretly labeled by IRS officials as a "sensitive case" and subjected to unannounced and hidden directives from Washington.

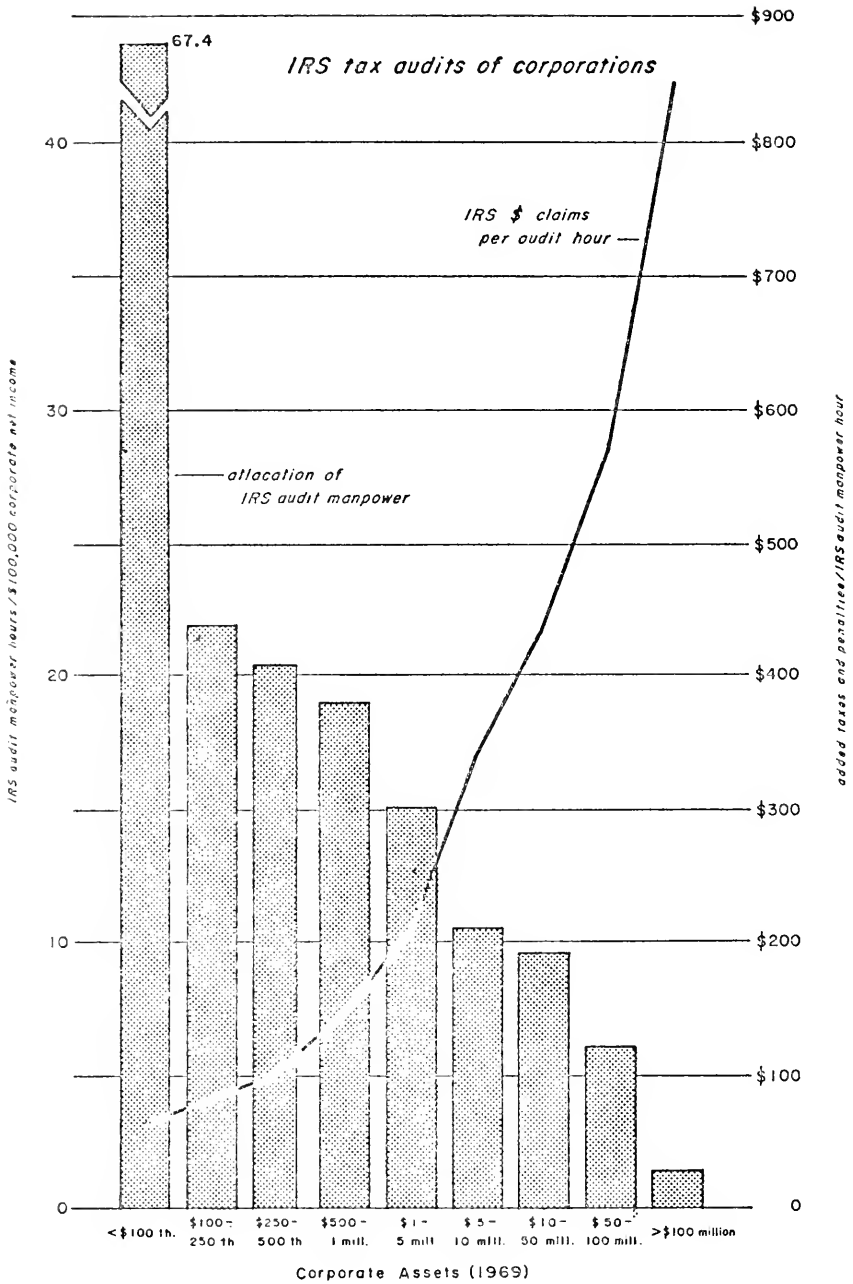


FIGURE 3

From John Dean's testimony before the Senate Watergate committee last summer, it would appear that the tentacles of IRS's sensitive case program stretched beyond the IRS National Office to the White House itself. In describing

the relationship between the White House and the IRS in apparent White House attempts to gain both special tax treatment for its friends and to "screw" White House enemies, Dean noted: "I did deal with one of his assistants [to the IRS Commissioner] from time to time on sensitive cases, where they were just brought to our attention \* \* \* to alert the White House to the fact that such an audit was occurring."<sup>5</sup>

*Program origins.*—During the tenure of former Commissioner Dana Latham in the Eisenhower administration, a classified directive dated April 1, 1959, identified as MS 12R-11 was sent out by William Loeb, then IRS head of audit, intelligence and collection operations to regional IRS heads.<sup>6</sup> In some detail it directed that "the National Office be notified" of "sensitive situations." Further reports, however, were required only when directed by Washington.

During the Kennedy years under Commissioner Mortimer Caplin the sensitive case program though apparently not expanded was retained. There is in fact some documentary evidence that the program may have been downgraded during this period of time. A directive (MS 12R-11, Amendment 2) was sent out on October 23, 1963, both reducing the number of copies of reports sent from an original plus six to an original plus two, and normal mailing procedures replaced earlier special handling.

It's continuing existence is evidence, however, in another directive (MS 40G-21) of December 1, 1961, over the signature again of Assistant Commissioner Loeb suggesting sources of leads for cracking down on "pockets of noncompliance" by district audit, intelligence and collection staff: "In identifying special compliance projects district officials will utilize all available sources of information \* \* \* Some of the sources of information available are \* \* \* Reports of Sensitive Cases."

Such a directive was consistent with the focus of the sensitive case program at that time which was directed just as much at potential situations or public allegations of tax abuses, as it was of particular persons. For examples, the 1959 directive had listed the following illustrations of sensitive cases:

"Allegations of abuse of the tax laws by major political figures, other particularly prominent and influential persons, including former employees of the Service.

"Notorious or significant situations involving the alleged payment of graft to public officials or the alleged misuse by public officials of position or influence for personal gain.

"Racketeering activities which are believed to have resulted in the receipt of very substantial amounts of unreported taxable income by the violators.

"Indications of significant non-compliance areas (geographic or occupational), as determined by Audit personnel for use in classification of returns; and indications developed through canvassing activity, surveys, or other means, of the existence of widespread areas of non-compliance \* \* \*."

During the early Johnson years under Acting Commissioner Bertrand M. Harding, the sensitive case program of IRS began to undergo expansion and change. On September 8, 1964, a new directive revising the 1959 orders was sent out by the new Assistant Commissioner, Donald Bacon, entitled: "Periodic Reports of Sensitive Cases." The directive (MS 12G-16) noted it had "been determined that it is necessary to keep National Office officials informed of significant developments in sensitive cases on a current basis." The timing of periodic reports was revised from monthly to "immediately after a significant change occurs in a sensitive case."

In the fraud area, "significant changes in Intelligence cases should be reported immediately to the Director, Intelligence Division, by telephone or teletype." As in the earlier 1959 directive, however, these periodic reports were not sent in on all sensitive matters. As the internal memorandum noted:

"Once a sensitive matter has been reported to the National Office, no further information concerning it need be furnished \* \* \* unless the National Office Division to which it is sent requests periodic reports."

*Political concerns surface.*—A further directive of November 2, 1964 (MS 8(24)G-12), over the signature of Arthur H. Klotz, Director of IRS appeals di-

<sup>5</sup> The transmittal of reports or information to the White House of the tax treatment and affairs of "sensitive individuals" would be in violation of 18 U.S.C. 1905 and sec. 7213 of the Internal Revenue Code providing not only for the discharge from Federal employment of persons involved but a year's imprisonment and/or a \$1,000 fine.

<sup>6</sup> The origins of the program appear to be even earlier since this directive makes reference to earlier instructions contained in IR-Mmeograph 58-65 and Regional Commissioner Memorandum No. 8-103.

vision amplified the September 4 instructions. The political concerns of the revised program surfaced. In the "significant changes" which called for immediate reporting to the National Office, number one on the list was:

"The receipt of an inquiry or information evidencing interest being shown in a case by the White House, Treasury Department, Members of Congress, etc."

In addition, the directive which went to all IRS personnel in charge of negotiating administrative settlements of tax disputes directed that more complete information should be submitted on compromise settlements "in regard to amount or percentage of recovery in settled cases and \* \* \* the basis for adjustments."

A year later and after IRS Commissioner Sheldon Cohen assumed office, a classified memorandum was sent out on December 8, 1965, to all Assistant Regional Commissioners of Collection. This directive marked a further expansion by requiring "advance notice of any enforcement collection action planned in sensitive cases."

A later implementing directive of March 15, 1966 (MS 12G-23), spelled out the requirements as follows: "When enforcement collection action is planned in a sensitive case, field personnel are requested to give the National Office a minimum of 24 hours' advance notice unless to do so would jeopardize the revenue." Washington was no longer satisfied with notice after the fact, advance notice was the new order of the day when sensitive cases were involved.

Around this same time another memorandum was also sent out by Assistant Commissioner Bacon to all Regional Commissioners. Marked "official use only" and dated January 5, 1966, it requested that:

"The sensitive case reporting procedure be fully utilized to keep the National Office timely advised of all actions taken or proposed involving the tax affairs of prominent KKK [Ku Klux Klan] figures."

Further the directive noted, "any information indicating possible federal tax violations should be thoroughly investigated."

*Expansion and change.*—In the final year of the Johnson administration under Commissioner Sheldon Cohen a new 12-page internal directive was sent out by IRS Assistant Commissioner Donald Bacon. Dated February 23, 1968, the directive stamped "official use only" totally revamped and expanded the sensitive case procedures that had slowly evolved since the 1950's.

For the first time special reporting forms, Form 4341 (Sensitive Case Report) and Form 4341-A (Sensitive Case Report Continuation Sheet) were printed, along with a special Transmittal Letter, Form 4342 for Sensitive Case Reports. The printed transmittal form made it clear that the sensitive case report was being forwarded not merely for information purposes, but for "appropriate review and action."

For the first time periodic reports were automatically required on all identified sensitive cases, and the coverage of the sensitive case designation was considerably altered and expanded to include:

"A major political figure, including a present or recent Cabinet Member, U.S. Senator or Representative, high U.S. Government official, Governor of a State, important state legislator, mayor of a city or prominent political party official.

"A family member or close personal friend of a major political figure.

"A nationally or internationally known businessman, racketeer, union official, religious figure, entertainer, sports figure, etc.

"An organization of national scope.

"Mass media (radio, television, newspapers, magazines, etc.) of national scope or representing a major metropolitan area.

"A club with a large influential membership."

Also included was: "A person who has received prior public attention because of his criticism of the Internal Revenue Service, the tax system, etc., or a taxpayer who: "A major political figure has shown substantial interest in the taxpayer's dealings with the Internal Revenue Service."

A new category called "urgent developments" to be "immediately telephoned to the Assistant Regional Commissioners" was defined as covering: "That situation which is of such unusual significance or publicity potential that it is likely to engender prompt contact with the regional or National Office by the news media or a major political figure."

In the case of contemplated enforcement action, tax liens or property seizures, the prior requirement of giving at least 24 hours advance notice to Washington was expanded: "notice must be given forty-eight hours prior to such action unless the delay would jeopardize the revenue." Also for the first time reference



was made to the possibility that the proposed enforced collection action on a sensitive case may be "prohibited or delayed by Service officials."

In the first years of the Nixon administration under Commissioner Randolph Thrower the pace of the new sensitive case directives increased. On March 31, 1970, a new directive entitled "Sensitive Case Reporting" was sent out by IRS Assistant Commissioner Donald Bacon followed shortly thereafter by an April 7, 1970, directive on the "Exempt Organizations Examination Program" which called for the establishment in the National Office of a list of cases identified for National Office control. One of the criteria for inclusion on this list was being a "sensitive case".

A further directive of November 4, 1970 (MS 12G-57, Amendment 1), again entitled "Sensitive Case Reporting" added a new category for inclusion in the sensitive case program where:

"The taxpayer concerned is a present or recent \* \* \* adviser appointed by the President to the position in which he serves."

New security measures were also promulgated for sensitive cases:

"All necessary security measures must be adopted to prevent the premature or unauthorized disclosure of any Service plan or activity in cases which, because of their sensitive nature or obvious need for secrecy in carrying out particular phases of the planned activity, must be handled in confidence.

"All sensitive cases shall be transmitted from office to office in double sealed envelopes marked 'to be opened by addressee only'.

"All sensitive case reports shall be filed in locked file cabinets.

"Sensitive case reports and files shall be made available or discussed only on a 'need to know basis'."

A further directive (MS 12G-65) of March 16, 1971, was also sent out by Assistant Commissioner Bacon detailing special requirements for "Reports of Sensitive Cases in Intelligence Function". This was followed on October 6, 1971, after Commissioner Johnnie Walters assumed office with another directive to audit personnel (MS 48G-166) setting forth guidelines for assigning agents to cases according to the "sensitivity" of the case.

Organizations such as "well established religious, charitable, or educational organizations, Little League, Boy Scouts, Community Chests, public educational institutions, small social clubs, and civic organizations were assigned to GS-11 grade level of agents with the explanation:

"*Sensitivity*: Some organizations seldom present questions which tend to excite emotions to the point of being a serious concern to the public or to the Service. \* \* \*

More experienced GS-13 level agents, the memorandum directed, would be assigned where:

"*Sensitivity*: Organizations at this level characteristically have a substantial sectional or nationwide membership or appeal basis. The organization may have highly controversial motives, such as civil rights groups, allegedly educational groups but having political orientation, and groups allegedly formed for social welfare purposes but with unpopular methods or goals."

*Cases which may create problems.*—A further directive sent out (MT S(23)00-9) October 29, 1971, extended the idea of "sensitive case reporting" to what was termed "potential problem areas". The directive noted:

"The potential problem areas go beyond technical questions to procedural, policy and public relations matters."

The shift between reporting for merely informational purposes, to a shift of actual control was made plain:

"It is important \* \* \* [to] alert the National Office and seek advice in such cases *before* taking action." (Emphasis in original.)

(MT S(24)40-9) These internal directives further cautioned that the issuance of statutory notice (notice of additional taxes due) to a sensitive case should rest upon an evaluation, in the words of these directives, of "the overall effect on the Service," rather than "the amount involved in a particular case."

Formal clearance procedures with Washington were instituted in an internal classified memorandum sent out by the current Assistant Commissioner John F. Hanlon on January 11, 1972. The directive required district offices to give at least "15 days advance notice" to the National Office and await National office reply before instituting an audit of "highly sensitive exempt organization cases" such as "nationally known churches and religious organizations" or "large colleges or universities."

The go-ahead, however, was given for district offices to audit less powerful churches and less prestigious colleges or universities since the audit of such groups was unlikely to "cause significant interest among a number of members of Congress, mass media of national scope, or large numbers of the general public."

Nor does it appear that the appointment of a new IRS Commissioner, Donald Alexander, pledged to restoring faith in the impartiality of our tax collecting agency has had any affect upon the ballooning sensitive case program. A further manual transmittal (MT 5(17)00-68) of November 8, 1973, noted that a special formal procedure was in effect for responding to what was termed as "White House referrals" in tax matters and tax complaints on IRS's handling of a particular case:

"In the case of controlled correspondence where the reply is to be prepared for signature by one of the Presidential Assistants, the National Office, Collection Division, ordinarily has only 48 hours to complete its handling of the case. \* \* \*

"Where the reply is to be signed in the National Office, \* \* \* Collection Division is expected to expedite final reply on behalf of the White House as much as possible. This means that the district office should give special handling to the case and expedite its report."

Sensitive case general reporting instructions were also revised in this manual transmittal, and the personal signature of the District Director and Assistant Regional Commissioner are now required on the sensitive case transmittal forms. The directive noted:

"The signature of the above officials will indicate their agreement with and approval of actions being taken in the case being reported."

*Special "sensitive case" personnel.*—The sensitive case program has become so large and institutionalized that IRS personnel in Washington, D.C., and regional offices have been assigned the special job of coordinating sensitive cases and sensitive case reporting. Document 6024, an internal directory stamped "official use only" giving audit officials and functions lists under the heading sensitive case reports the following:

Richard Robinson (202-964-4167), Washington, D.C.

M. Todman (212-264-7812), New York.

Louis N. Loesmandy (312-353-3660), Chicago.

Howard C. Hiland (513-684-3447), Cincinnati.

Edith Callaway (404-526-6805), Atlanta.

Thomas F. Longstaff and George A. Young (no phone listed), Dallas.

William L. Tierney (415-556-6635), San Francisco.

Even work-plans drawn up for the coming year are beginning to allocate man-days to sensitive cases. At the regional level, for example, regional analysts are required to keep track of the time spent on sensitive cases, and statistical reports are prepared quarterly and annually to keep track of planned vs. actual time spent on sensitive case programs.

*Expedited refunds.*—Even the processing of refund checks has now recently been invaded by special "sensitive case" procedures. For example, just last December 19 an internal memorandum was issued over the title of Charles D. Moran, Assistant Western Regional Commissioner, on the subject of "Manual Refunds on Sensitive and Special Cases":

"This memorandum establishes the requirement that all sensitive and special cases involving refunds will be manually refunded \* \* \* These instructions are consistent with the requirement that all sensitive and special cases be processed expeditiously."

*Sensitive cases computerized.*—Nor has the "sensitive case" program escaped computerization. At least in the collection area, internal IRS training materials and operating manuals indicate that a special "Q" primary code is to be assigned "sensitive cases" and input into IRS computer Master Files. Such a designation labels taxpayers singled out as sensitive cases within the computer's memory files, and can be used to control the issuance and timing of notices to the taxpayer and instructions sent by the computer to institute action by IRS field personnel in a case.

Training course materials for beginning revenue officers (Training No. 2237-02 (6-73)) include exercises in which they are required to identify from examples of computer issued collection notices which ones concern a sensitive cases through special computer markings and codes.

Trainees are also taught how to make out a Form 3177, Notice of Action for Entry on Master File, which when submitted to IRS Service Centers causes the computer to mark the taxpayer's account as a "sensitive case" for future, as the instructions put it, "special handling".

"Official Use Only" internal manual instructions dated 11-13-70 exhort collection officers that computer notices they receive with a primary "Q" code "require special handling when received." They are told to: "Check the master index file for a colored flash card before making the assignment."

Secrecy in this instance has been used by the IRS to shield and nurture a program wherein so-called "sensitive cases" are singled out for special attention and handling. Perhaps the public would approve of such a program, perhaps not. But the right of the public to review such a program cannot be questioned. IRS attempts to hide behind stamp of secrecy and limit public access to the full documentary evidence surrounding their sensitive case activities must not be allowed to continue.

#### RECOMMENDATIONS

Since this Subcommittee has reported to the full Judiciary Committee legislation that would strengthen the Freedom of Information Act, similar legislation already having been passed by the House a few weeks ago, we would like to add our voice to those recommending changes in the following areas.

*Excessive delays.*—We have been experiencing increasing delays from the IRS in responding to our freedom of information requests. Rather than getting better, IRS performance has been allowed to deteriorate.

We have already mentioned some examples of inordinate time delays in responding to even a request for a single document, identified by name and number, a copy of a blank form, or a xerox of but a few pages from a readily accessible report. We have had one request pending since late in 1972; quite a number of requests we are still awaiting even an acknowledgement on since September of last year, now nearly seven months ago. Even letters requesting word on the status of a request or an estimate of when we should expect a response are met with complete silence from IRS.

Even though we had earlier received written authorization to examine a document index published by the IRS, recently we had to wait four months for a letter allowing us to examine the next issue of the same document index.

The necessity for legislation, as contrasted with administratively initiated reform, is best illustrated by a recent conversation we had with the Chief of IRS's freedom of information branch—the branch responsible for overseeing processing of all freedom of information requests.

Our conversation concerned a directive IRS had issued last July 3, in response to an earlier directive issued by the Treasury Department, to all Disclosure Staff employees on the processing of freedom of information requests. Among the requirements established by this July 3 directive was that replies would be sent out no later than "the tenth working day after receipt," or failing that at least acknowledged within that time giving "the reason for the delay and as definite an indication as possible of the time required for a decisive response."

The directive came as something of a surprise to us when we finally obtained a copy early in February of this year since we had yet to receive an acknowledgement of a request let alone a justification for delays. Indeed on our request for this very directive nearly two months had passed before we received an answer and there had been no acknowledgement or explanation given by IRS for this delay.

Last month when we were in Washington, D.C., we asked IRS Freedom of Information Branch Chief, Mark Farbenblum, why we had never been sent an acknowledgment to a request since rare was the response that IRS processed within 10 working days. The FOI Chief merely shrugged his shoulders and said without apparent concern, "Oh, we don't pay any attention to that directive." Indeed, under questioning he indicated that their office typically made no attempt to follow-up on the processing of a request to ensure that it was handled promptly as it made its rounds across officials' desks for signature and signoff.

We hope Congress will quickly enact requirements, such as those contained in S. 2543, setting specific time limits within which an agency must act upon requests and appeals. No action short of such a statutory change, we feel, will have much affect on IRS's cavalier attitude toward answering FOI requests.

*Excessive costs.*—Since IRS disclosure policies hardened last fall, the agency has been turning increasingly to excessive pricing mechanisms as a means to limit or effectively bar public access.

Last fall, for example, IRS began refusing requests for copies of printed documents it had on hand, forcing requestors to xerox them at 10 times the cost. Even with its warehouse bulging with copies, IRS refused to furnish us copies at printed material rates of the basic training texts used for collection officers. Nor would we be allowed to place an order in advance of publication, so we could ensure receipt of a printed copy.

A second ploy IRS has recently adopted as we mentioned earlier is to refuse to allow you to inspect the agency's copies of records, restricting access to the purchase of photocopies at 10¢ a page even though you wished to inspect not copy the documents. This has occurred on a number of requests from index cards to manual directives. The prohibitive costs under such a procedure are often as effective as an outright denial in limiting access.

While the amendments proposed in S. 2543 do not appear to remedy these difficulties directly, we would hope that in some way it could be made clear then an arbitrary and unreasonable pricing policy is effectively the same as a denial of access and therefore reviewable by the courts.

The ultimate pricing barrier is, however, the costs of instituting a court suit to force compliance. To a lot of people like ourselves, this is an important barrier. We are encouraged by the inclusion of a provision in both the Senate and House bills for payment of reasonable attorney fees by the government to a successful litigant. There is a real need for such a provision in the law.

*Necessary sanctions.*—The lack of any real sanctions in the present freedom of information statute breeds disrespect for the law—a disrespect we find so prevalent among IRS officials. It is an attitude displayed when IRS officials feel free to ignore our requests, to mislead or lie to us, or when they lower themselves with threats of retribution. But it is also an attitude displayed in the many less significant acts which piled one on top of another have made us invest four persistent years of effort into gaining access to information that rightfully should have been made available for the mere asking.

As long as agencies are free to flaunt the law with impunity, citizens will continue to be wrongfully barred from information. After all, the narrow self-interests of bureaucracies and bureaucrats are typically better served by secrecy, not disclosure.

We hope Congress will enact a requirement, such as that found in the Senate bill, giving courts the authority to fine officials responsible for flagrant violation of the law. Along similar lines our own State of Washington two years ago passed a state freedom of information law. Although modeled closely after the federal law, it provides authority to the court to impose a \$25 fine for each day agency records have been unlawfully withheld. Such measures as these are based upon the simple truth that government officials, as well as private citizens, must be held accountable for their actions.

*Administratively implemented changes.*—Legal changes aside, a great improvement in opening up access to its records could be brought about administratively by a few simple changes in IRS procedures in responding to freedom of information requests. A much needed improvement would be wrought if IRS field offices were authorized to make a document available to other requestors once it has been reviewed and released by the National Office in response to a freedom of Information request.

At present IRS disclosure policies are highly centralized. Only the National Office, and only the Assistant Commissioner (Compliance) and the Commissioner within the National Office, have been delegated the authority to respond to requests for information under the Freedom of Information Act.

Obviously such a centralization creates a bottleneck and results in long delays. Just the mere requirement of having to write to Washington, D.C., and then await a reply by return mail means weeks of delay even if IRS were to be prompt in responding.

Once a request reaches Washington, however, the delay just begins. The present procedure in processing a request we are told is as follows regardless of whether the request received is the first for a particular document or merely duplicates an earlier request which has already been processed and the document released.<sup>7</sup>

<sup>7</sup>Theoretically, at least, if the requested document has already been placed in the National Office Reading Room these steps are short-circuited. However, we have been denied access to documents which we later discovered were on the Reading Room shelves at the time IRS's written reply was processed.

These are the hurdles a request must pass:

(a) First, the letter eventually is delivered to the Freedom of Information Branch of Disclosure Staff where the Chief, Mark Farbenblum, reviews it and assigns it to an analyst to prepare a reply.

(b) The analyst, who may have a backlog of 50 or more requests he is already working on, eventually finds time to locate the document and preliminary discussions are held with the IRS staff in that area to see if they are willing to release it and a review of the document takes place. This may take weeks or months.

(c) The analyst eventually drafts a tentative letter in response. It is typed and then goes to Mr. Farbenblum, FOI Branch Chief, who must approve the letter or send it back to the analyst if as Chief he doesn't approve of having the document released.

(d) After the letter clears Mr. Farbenblum's desk, it begins its rounds for approval sign-off. It must pass across every official's desk who conceivably might be concerned about releasing the document—each official having veto power to force withholding of the document. If for example the document concerns the audit area, the letter must be approved and signed off by officials in audit; if the document concerns more than one area as is often the case it must go to each area for sign off.

(e) Assuming the letter passes this last hurdle it is routed to Edward Scheidenhelm, Technical Assistant to the Director of the General Litigation Division within the Chief Counsel's Office, for approval and sign-off. He too can veto releasing the document or impose additional conditions on its release.

(f) Next, it usually goes to the Public Affairs Office for check off. Leor H. Levine, as we understand, is one of the officials within Public Affairs across whose desk FOI response usually pass.

(g) Finally, it lands on the desk of Chief of Disclosure Staff, Charles A. Gibb, who is directly over the Freedom of Information Branch where the letter originated. Mr. Gibb either pens Assistant Commissioner Hanlon's name on the letter, or he forwards the letter to Mr. Hanlon for his personal signature before the letter is sent out.

Obviously this process can assume a great deal of time, particularly since there are apparently no self-imposed time limits at any stage of the way. The letter sits on each person's desk until he makes up his mind or gets around to signing it off. Normally, we were told, Disclosure Staff does not monitor the progress of the letter once it leaves their office to begin its rounds for approval sign-off.

It seems to us that given this thorough review of a document on the first go-around, there is no rational reason for requiring each additional requestor to go through the same slow process of obtaining written approval from Washington before he is allowed to see the document. The only reason we can see for such a policy is to discourage, limit and delay public access.

An alternative procedure would be far simpler: authorize field offices to make a document, once it has been released to one person, available to anyone else. This has on rare occasion been done by the National Office, but only where they feared a rash of adverse publicity by not doing so.

Already each Friday IRS prepares and sends out a directive listing all the new documents that have been distributed to the field during the past week for internal use. (Distribution Supplementary Information List or DS.L.) It would be a simple matter to add a few lines to that directive, or to some other directive, noting any new material IRS has released to a requestor under the Freedom of Information Act during the past week and authorizing all field employees to furnish that material where available in the local office to other requestors.

By the same token, to enable members of the public to be aware of what material is now available, IRS should also be required to post these lists in a public place in local offices, as well as publish the list in its weekly Internal Revenue Bulletin. Because this Bulletin is also cumulated semi-annually by the IRS in bound volumes available in many public libraries, this would provide a ready research aid to taxpayers seeking information.

Now there is no practical way for a taxpayer short of coming to Washington himself to find out what information has already been released by IRS under the Freedom of Information Act. Taxpayers now cannot even find out what information is located on the shelves of IRS's Reading Room in the National Office without coming to Washington since that information is not even furnished over the telephone.

We would hope that this Committee, as a watchdog over implementation of the Freedom of Information Act, would ask IRS's cooperation in implementing such a procedure.

*IRS classification practices and the Library of Congress.*—Although the Internal Revenue Service is required by law to furnish the Library of Congress copies of internal documents it publishes, IRS has escaped compliance with these provisions by placing a stamp "for official use only" on its internal publications barring access to outsiders.

While the "official use only" stamp is inappropriate for publications required to be made publicly available under the Freedom of Information Act, we still find such basic information as statistical reports, training texts, manuals, scientific reports, and catalog indexes issued bearing this stamp.

Because of these "official use only" stamps and IRS's general reluctance to make its internal documents available to the Library of Congress, these materials are not being furnished the Library. Indeed, we have more information in our living room about the audit compliance end of the Internal Revenue Service than is presently available on the shelves of the Library of Congress.

The Library of Congress was originally created over a 100 years ago to serve as a reservoir of information to Congress. Yet little information about one of the most important agencies of government, the Internal Revenue Service is now available there.

We would certainly appreciate if this Committee would ask IRS to furnish it with the criteria and procedures presently followed before an "official use only" stamp is placed on its documents, and an explanation why documents such as statistical reports, training textbooks, manuals, scientific reports and indexes are not now on the distribution list to the Library of Congress.

We appreciate the interest of this Committee and the opportunity to testify today. Thank you.

Senator KENNEDY. Mr. Field?

#### STATEMENT OF THOMAS FIELD, EXECUTIVE DIRECTOR, TAX ANALYSTS AND ADVOCATES

Mr. FIELD. Mr. Chairman, I am going to abbreviate my statement.

Senator KENNEDY. Fine. Excuse me, Senator, did you have any questions?

Senator THURMOND. We are glad to have them all here and give us their views. We are especially glad to have Mr. Caplin here.

#### REASONS FOR IRS NONCOMPLIANCE WITH FOIA

Mr. FIELD. Mr. Chairman, in my view the Internal Revenue Service has generally failed to comply with either the spirit or the letter of the Freedom of Information Act. I think the first question to be asked is why that is so. Part of the problem is the statute itself. That statute, as originally enacted was very vague, and the vagueness encouraged the Internal Revenue Service to think that the statute imposed few if any new requirements on it. What has happened is that subsequent judicial interpretation of the Freedom of Information Act has eliminated much of the confusion about the meaning of key phrases in the act. But although some Federal agencies, and I might name notably the SEC with respect to no action letters and the Food and Drug Administration, have reacted to these judicial developments, by expanding the flow of information about their operations, there has been no parallel development in the case of the Internal Revenue Service. Such documents as the Service has produced in response to the Freedom of Information Act have generally been forced from it by lawsuits.

Now the most serious problem it seems to me today is apparent unwillingness of the Service to undertake a serious reevaluation of its current information policies, in light of the growth of the law under the Freedom of Information Act. As a matter of fact, the Service today seems to me to be digging in its heels and resisting further disclosure. And if I am right in that evaluation, and I hope I am not, the likely result will be a spate of lawsuits testing the Service's position with respect to various documents. And if that occurs, my guess is that the Service is going to come off second best in most of those confrontations. That means to me that the Service has a great deal to gain from prompt reevaluation of its existing public information policies.

Now there is another reason why it seems to me that the Service has been slow to implement the Freedom of Information Act and that reason lies in the Service's traditions and outlook. First of all, there is the tradition, which is shared by virtually all Federal agencies, of wartime and cold war secrecy. But the survival of that instinct of secrecy within the Internal Revenue Service at a time when other agencies have begun to root these instincts out suggests that other influences are also at work.

I think that one important additional factor is that most but not all Federal tax returns are protected from disclosure by statute. What that means is that the basic document, with which most IRS personnel work, is a document that quite properly should be kept secret, should be treated as confidential. But the Service I think finds that that basic fact about the privacy of tax returns makes it easier to claim that other Service documents are also confidential.

Now lest this chain of reasoning seem fanciful, I want to invite the subcommittee's attention to a recent change in the IRS definition of the term tax "return." As Commissioner Caplin pointed out earlier this morning, that definition is the regulatory definition under the provision of the Revenue Code, sections 6103 and 7213, which protects the privacy of the documents that we all fill out each year and all submit to the Service. What has happened is that the Service has changed the definition of what constitutes a tax return and the change is so broad that it can arguably sweep within the scope of the statutory protection for tax returns virtually every piece of paper within the Internal Revenue Service.

As amended the term "return" includes any oral or written information in whatever form, "relating to" anything which, in turn, is "designed to be supplemental to or become part of a return."

So it is a very broad definition.

I might add by the way that it is precisely that changes in the regulations which the Service is currently relying on to deny public access to IRS rulings. And as you will recall, that was one of the topics on which Commissioner Caplin testified in his earlier testimony.

The basic Service argument today is that rulings, which frankly I don't think anyone ever thought were tax returns, are in fact returns within the scope of this new regulatory definition and therefore exempt from Freedom of Information disclosure.

There is one other factor within the category of Service outlook that has contributed I think to reluctance to obey the Freedom of Information Act and that is a curious interpretation of the lawyer-client

privilege. I won't go into that in detail, but to try to summarize in a nutshell what is going on, I think—and the Service can negate me if it feels I am incorrect in my information—I think a doctrine has developed under which the IRS attorneys are required to treat the Commissioner of Internal Revenue or his deputies as a client whom they are serving rather than the general public. And that means, of course, that virtually any communication between an IRS attorney and his superiors is arguably exempt from Freedom of Information disclosure because disclosure would violate the attorney-client privilege. It seems to me that the proper way to deal with this problem is to apply the attorney-client privilege in the context of a governmental agency in a way that treats the American public as clients of the attorney employed by that agency. That interpretation, as far as I am concerned, has the advantage of emphasizing that the Government's attorneys' loyalties are to the public interest and that interpretation also seems likely to work in favor of rather than against voluntary public disclosure of IRS information.

Now I would like to return for just a moment to look at some of the pressures which are being brought to bear on the IRS against disclosure.

One of the reasons why I was so encouraged by Commissioner Caplin's statement earlier this morning is that I know from conversations and experience that public scrutiny of the IRS and public disclosure of IRS rules and documents is not perceived by him and perhaps most members of the tax bar as being in their best interest. If nothing more, the public scrutiny and public disclosure is going to make the average tax practitioner's work more difficult and it is going to make it a little more time consuming to get, for example, a Revenue ruling from the Service. Furthermore increased IRS disclosure under the Freedom of Information Act is also likely to break up the little pockets of private law expertise, what I would call private law monopolies sometimes, which IRS secrecy has created and sustained. What it amounts to is that because the IRS has not published many of its rulings and because many of its basic policy documents are not published at all, as a consequence many tax practitioners are not able to ascertain with clarity what the law is on a given subject at least not without consulting a privileged few who have gotten an inside track in a particular area. And if a practitioner is the beneficiary of a private law monopoly, as I tend to call it, naturally he is not anxious to see that privileged position broken up by making generally and cheaply available to everyone what he often with great effort has made available for himself and his clients.

Senator KENNEDY. You mean that a number of those who are practicing the tax law may not favor the kind of disclosures that Mr. Caplin, for example, who probably is the leading tax lawyer in the city, would support?

Mr. FIELD. That is correct, Senator, and indeed that is why I found his statement this morning to be so encouraging.

Now there is a final factor that needs to be mentioned to understand why the IRS has been slow to respond to the dictates of the Freedom of Information Act and that is quite simply the weakness of public interest groups themselves. Without going into detail, we see ranged here at this table between Phil and Sue Long and myself a good chunk



of the entire battle force which does battle with the IRS on the Freedom of Information Act.

Senator KENNEDY. You are doing very well I must say.

Mr. FIELD. Well, there is the phrase that "because my cause is just, my strength has the strength of 10." And that phrase indeed does have my truth to it. But the fact is it is our own inadequacies and our own weakness that has prevented us from bringing clearly to the attention of the IRS the need for compliance with the law and reevaluation of their policies in light of the recent cases which have been construing the Freedom of Information Act.

#### NEED FOR DISCLOSURE

I would like to close, Mr. Chairman, by turning just for a moment or two to the reasons why I believe disclosure of IRS documents is so important. I am going to mention two points. The first is entitled—and I am quoting from Judge Robinson's decision in our own tax analysts case earlier this year—the first section of it is entitled "Secret Law is an Abomination."

Now I use that phrase not simply because it has a ring to it and not simply because it has been blessed by judicial usage, but because I am very concerned that the IRS has built up an enormous body of secret law which is simply unavailable to the public, to the tax bar or anyone else except in the form of leaks. Included in that body of secret law are hundreds of thousands of unpublished private rulings, tens of thousands of which are classified by the Service as having reference value, which is to say precedential significance. Also included are thousands upon thousands of secret policy memoranda that constitute official interpretations of published regulations and other announcements. Those are the AOD's and the GCM, which are actions on decisions and the General Counsel's memoranda that Commissioner Caplin mentioned earlier.

Senator KENNEDY. Could I ask, does your law firm keep rulings for future reference?

Mr. CARLIN. No; we just have a file of our own rulings we have procured in our office. We don't attempt to collate rulings from other offices. We just kind of built up the knowledge. There is an interchange though. Various members of our law firm will have friends in other firms. If they have a problem, if they have had an encounter before, they might want to find out whether the Service has ruled in a particular area.

Senator KENNEDY. Do those precedents have weight when they are presented to the IRS?

Mr. CARLIN. Well, they are not of binding impact but they do help persuade the Service. The fact that they have issued a ruling of one sort to someone else puts them on notice that well, they have to have valid reasons for denying one to you. This sometimes happens where a policy will change. They may find that they issued a ruling a year ago and perhaps they hadn't considered all of the problems and maybe they are concerned about the validity of that ruling and maybe holding back on issuing current rules. You can't prevent that. I think that option has to continue. But it is persuasive, Senator, to have someone else's ruling or to know that a ruling was issued. Of course

in connection with large corporate mergers, frequently a copy of the ruling will be annexed to the proxy material and the shareholders will be told to annex a copy of that ruling to their tax returns. It doesn't always happen, but you will frequently see that.

Mr. FIELD. I think it is fair to say the requirement of the SEC with respect to rulings involving corporate mergers have been very helpful in bringing to the public attention the rulings that the IRS is not yet ready to publish. For the rest, we have got to rely on sitting down at lunch some time with a tax practitioner and hoping that he will share his skill with us.

Senator KENNEDY. As I understand it, the SEC rulings are public and the Federal Trade Commission's individual opinions are public?

Mr. FIELD. That is right. In both cases they are now public. The Securities and Exchange Commission's no action letters, which are essentially clearances for corporate transactions, were made public by a voluntary decision of the SEC about 2 years ago in compliance with the Freedom of Information Act, and quite frankly, many of us thought that since the SEC had taken that step with respect to something which is very similar to an Internal Revenue Service ruling, that the IRS would be quick to follow.

Senator KENNEDY. You would think so. I mean obviously they must have a lot of sensitive information in terms of business practices, financial dealings, and so on that is important in terms of the competitive situations.

Mr. FIELD. Yes; and let me add to that sensitive information point that in our own case we have faced and I think dealt with the problem of what to do when an Internal Revenue Service ruling contains other sensitive information. The ruling in question involved a Cleveland firm that produced a metal called beryllium—and if the reporter is able to spell beryllium, I will take her to lunch—but in any event—

Senator KENNEDY. If you can tell me how to spell it, I will tell you how to spell diethylstilbestrol.

Mr. FIELD. I am not sure of my ability to spell the word. I have missed it many times so I am not going to take you up on that.

The rule in question contained a description of a patented process. The attorneys for the firm and ours sat down with a razor blade and negotiated a little bit over precisely where the razor blade ought to be applied, agreed, and applied it. The ruling is now part of—well, it is now an appendix, a public appendix of our brief in district court. The firm itself had no objection to that procedure. And I might add that procedure was applied by us in consultation with counsel for the other side after the event and is essentially similar to what Commissioner Caplin was proposing be done as a routine matter in the future before the event, before the ruling is issued. It seems to me to be a perfectly feasible procedure.

In any event to summarize with two points, with which I want to close, I would like to say that I firmly believe as a tax attorney that the IRS owes the public the fullest possible disclosure of the legal materials that it uses internally to interpret and explain its published rules. If an IRS agent or an IRS attorney has access to a legal memorandum that interprets or explains the meaning of a published rule

or decision, that internal memorandum ought in my view to be equally available to the public.

Senator KENNEDY. Now, how do you respond to the point that if the public had access to memoranda, then maybe skilled tax lawyers could use them in ways to circumvent the law and create more loopholes?

Mr. FIELD. Well there is no question but that public availability of information as to who has gotten a tax interpretation from the IRS means that everyone else will get a similar favorable interpretation promptly. But that goes to the point which Phil and Sue Long emphasized, Senator, the question of equal treatment of similarly situated taxpayers. If indeed a favorable interpretation is appropriate in the case of taxpayer A, it ought to be equally appropriate in the case of taxpayers B, C, and D.

Senator KENNEDY. And if there is a public reason why this cannot be disclosed, then it is up to the Congress to alter that?

Mr. FIELD. That is right.

Senator KENNEDY. But in this case we just don't know. We get to the inequity, that the law may not be applied uniformly, in other words, that taxpayer B has no reason to know that taxpayer A is able to get a certain kind of agreement and the public doesn't know and the Congress ought to know and ought to do something about it.

Mr. CAPLIN. Senator, the best schooling on tax avoidance can be found in congressional hearings where an exposure of the various types of tax preferences and tax advantages are made but then these things are frequently left just lingering and yet there has been the publicity and exposure and I am sure stimulation for use. I don't think you can hide behind that though. I don't think that is a good answer though.

But I think you were touching on a related point; where the lawyers for the Commissioner talk about how you separate one issue from another, that is, one side of the line where you have tax liability and on the other side where you would not have tax liability. I think that is a point related to this, that is, that by giving a guideline you would be, let us say, giving a guideline on how to avoid taxes. Then I would assume Tom Field would say, well, that ought to be part of the public knowledge anyway.

Mr. FIELD. That is correct.

Mr. LONG. I think one thing that might be brought out, what they are talking about is the top 1 percent of the taxpayers. The other 99 percent of the taxpayers have no access to rulings and they have no access to technical advice. We tried it 4 years ago in our first trip. We tried to get technical advice. At that time we were inexperienced and we went through the Assistant to the Director of the Audit, Mr. Woolf, and they said that it isn't right; it is a privilege.

Mrs. LONG. The little people just don't have that privilege.

Mr. LONG. The little people don't have that privilege. That is what I would like to say. Like even for the taxpayers' assistance programs, if you go in and have taxpayers' assistance at an agency of IRS, there is nothing that will—

Mrs. LONG. Nothing that will bind on them.

Mr. LONG. At an audit, yes, thank you.

There is a final point I would like to make, Mr. Chairman. It is an additional and in my view very serious reason why compliance with

the Freedom of Information Act is very much in the Service's own interest. It relates to the protection of the IRS against improper political pressures. Now like any Federal agency, the IRS is subject to political pressures of various sorts. Some are legitimate such as a letter from a Member of Congress regarding a constituent inquiry. In my view that is a perfectly appropriate part of the ombudsman role the Congress has had to assume since the Federal bureaucracy has grown.

Senator KENNEDY. You are aware that the IRS Manual says that the taxpayer may waive his privilege surrounding his income tax return information in several ways as, for example, the taxpayer communicates with his Congressman complaining about some complex action that the Service has taken. Now that is right out of the IRS Manual. The taxpayer may lose his right to privacy by writing his Congressman. Now what sense is there on that?

Mr. FIELD. I hope—and I cannot supply you with definitive information on that portion of the manual—but I hope that the meaning of that phrase is considerably more narrow than it may seem on the surface. The Service will have to tell you whether I am right about what I am about to say, but I hope and suspect what that means is that if a taxpayer requests congressional assistance in connection with a tax problem, that the Service can share with the congressional representative alone or with his staff information with respect to the taxpayer's return. I hope that is all that means. If it means that there is a general waiver of the privilege of confidentiality, then it seems to me to be a much more serious statement and one that the IRS ought to be questioned on. But I hope and suspect it means the first and not the second.

Mr. CAPLIN. I think one of the problems the Service has is in responding to adverse publicity. When the taxpayers start releasing things saying the Revenue Service hit him over the head, they like to explain the circumstances. And this may be broader than what you have said. It may be that they are reserving the right to respond if the Congressman gets and starts making some noise.

#### IMPROPER PRESSURES ON IRS

Mr. FIELD. In any event, it does seem to me that in the last year we have seen some pressures brought to bear on the Internal Revenue Service that cannot in any way be characterized as legitimate. For example, I regard as illegitimate the sort of political pressure that apparently led to the publication of Revenue Ruling 72355 and that is the ruling that permitted major political donors to avoid gift tax by breaking their gifts up into \$3,000 units. And I note that in a case, which has been tried by Commissioner Caplin's firm that the District Court of the District of Columbia has recently found as a fact that illegitimate political pressures influenced the denial by the IRS of tax exemption for a group called the Center for Corporate Responsibility.

Now the problem in this area for the IRS, as for any Federal agency, is to separate the illegitimate pressures from the legitimate. And in dealing with this problem it seems to me that the Service has missed a very important point and that is that public scrutiny and public disclosure are among an agency's best defense against improper political pressure. If an agency makes a habit of operating on the record, it is less likely that improper proposals will even be made

because the proponent will not want his request to become a matter of public record. And if the agency spreads its decision promptly on the public record thereby inviting public comment and scrutiny, it is far less likely that political favors can be conferred without generating adverse public comment.

So in that way the very fact of public disclosure can strengthen a bureaucrat's hand when he is forced to deal with improper political pressure.

Now in dealing with this subject, in considering this subject I think it is proper in closing to realize that the full story about recent political pressures on the Internal Revenue Service has yet to be written. Among other things, the Joint Committee on Internal Revenue Taxation has yet to complete its examination of the files of the Service's now disbanded Special Service Staff. And although the Joint Committee has absolved the IRS from blame in its handling of the famous "Enemies List," the verdict on the "Friends List" is not yet in. Furthermore unless this subcommittee or some other branch of Congress investigates the matter, the full story about the \$3,000 gift tax ruling and the Center for Corporate Responsibility ruling seems unlikely to come out. When and if the facts in these areas become known, I think that we will see more clearly the need to encourage the IRS to develop better defenses against political pressure. Public scrutiny and public disclosure are amongst the more important of those defenses. Thank you.

[Statement in full follows:]

STATEMENT BY THOMAS F. FIELD, EXECUTIVE DIRECTOR, TAX ANALYSTS AND  
ADVOCATES

Mr. Chairman and members of the Subcommittee on Administrative Practice and Procedure, I am grateful for your invitation to comment on the implementation of the Freedom of Information Act by the Internal Revenue Service. This is an important subject, and this Subcommittee can perform a very useful service by focusing the attention of both the public and the IRS on this question.

I. THE REASONS FOR IRS NONCOMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

In my view, the Internal Revenue Service has generally failed to comply with either the spirit or the letter of the Freedom of Information Act. There are several reasons for this state of affairs:

1. *The statute itself.*—The Freedom of Information Act, as enacted, was phrased in very vague terms. Vagueness particularly characterized the nine exemptions or "escape clauses" in the Act. This vagueness encouraged the Internal Revenue Service—like many other federal agencies—to give a broad interpretation to the Act's exemption clauses and a narrow interpretation to its disclosure provisions. Moreover, the vagueness of the Freedom of Information Act's language encouraged the belief on the part of the Internal Revenue Service that the Act imposed few, if any, new obligations on the IRS.<sup>1</sup>

Subsequent judicial interpretation of the Freedom of Information Act has eliminated much of the confusion about the meaning of key phrases in the Act. In general, these judicial interpretations have tended to enlarge the public's right to obtain information about the operations of government agencies. The courts have done this, in the main, by giving a strict, narrow interpretation to the Act's nine exception clauses.<sup>2</sup> In so doing, they have been implementing the

<sup>1</sup> See, for example, "Chief Counsel's Classification of Records" under 5 U.S.C. 552, the "Freedom of Information Act," by L. R. Uretz et al. (Unpublished manuscript now on file in Civil Action No. 841-72 (D.D.C.))

<sup>2</sup> The exception to this statement is the Supreme Court decision in *Environmental Protection Agency v. Mink*, 410 U.S. 73 (1973), relating to classified atomic energy information.

intent of Congress, as expressed in the Committee reports relating to the Freedom of Information Act, which make it clear that the purpose of the Act is to increase the public's flow of information about its government.<sup>3</sup>

But, although some federal agencies have reacted to these judicial developments by expanding the flow of information about their operations, there has been no parallel development in the case of the Internal Revenue Service. Such documents as the Service has produced in response to the Freedom of Information Act have generally been forced from it by lawsuits—and, even then, the Service's compliance with the dictates of the courts has been slow and incomplete. This is particularly true in the case of the Internal Revenue Manual.

Even more serious, however, is the apparent unwillingness of the Service to undertake a serious reevaluation of its current information policies, in light of the growth of the law under the Freedom of Information Act. If such a reevaluation were undertaken today, I think that the Service would find that its current policy of withholding information has little remaining legal justification in most instances. Instead, however, the Service seems to be digging in its heels and resisting further disclosure of any sort; the likely result will be a spate of lawsuits testing the Service's position. If that occurs, my guess is that the Service will come off second best in those courtroom confrontations. And if I am right about that, the Service has a great deal to gain from prompt reevaluation of its existing public information policies. Unfortunately, I see little sign that it is willing to undertake that task.

2. *IRS participation in the 1966 attempt to subvert the FOIA.*—Service compliance with the Freedom of Information Act is also hampered by the legacy of the attempt, in 1966, to subvert the Freedom of Information Act by rewriting the House Committee Report relating to that Act. As you know, the Department of Justice, in 1966, prevailed on the House committee that considered the Freedom of Information Act to write a committee report on the Act which largely reflected executive branch views—including IRS views. But no changes were made in the statute itself. The result was a committee report which subverted, rather than clarified the law.<sup>4</sup>

That committee report has been roundly condemned both by the courts and by leading experts in the field of administrative law.<sup>5</sup> But the Internal Revenue Service continues to treat the House report as the true gospel, even through the courts have long since declared it to be apocrypha. It is time, I think, for the Service to recognize that information policies rooted in the House report on the Freedom of Information Act will not withstand judicial scrutiny.

3. *The Service's traditions and outlook.*—The service's traditions and outlook furnish another possible explanation for its grudging compliance with the Freedom of Information Act. First, there is the tradition—shared with other federal agencies—of wartime and cold war secrecy. But the survival of these instincts in the IRS—at a time when other agencies have begun to root them out—suggests that other influences are also at work.

Among these additional influences is the fact that most (but not all) Federal tax returns are protected from disclosure by statute.<sup>6</sup> One can debate the wisdom of this statutory policy, and it is worth noting that at some periods and in some states, tax returns have been open to public scrutiny. But I think it is fair to say that the statute that mandates privacy for tax returns enjoys widespread public understanding and support, and seems to be an important adjunct to our self-assessment system of taxation.

Because tax returns are exempted from disclosure by statute, IRS personnel are accustomed to treating the basic documents with which they work as confidential. That fact, in turn, makes it easier to claim that other Service documents are confidential.

Lest this chain of reasoning seem fanciful, I want to invite the Subcommittee's attention to a recent change in the IRS definition of the term tax "return".<sup>7</sup>

<sup>3</sup> See the discussion of this point in *Bristol-Myers v. FTC*, 424 F. 2d 935, 938 (D.C. Cir.) (1970).

<sup>4</sup> H. Rep. 1497, 89th Cong. (1966)

<sup>5</sup> See Davis, *Administrative Law Treaties* 131 (1959, Supp. 1970) and the cases there cited. Davis states flatly that the House Committee Report "is not the law."

<sup>6</sup> In this discussion, I use the term "return" in the traditional sense of a detailed computation of tax liabilities, rather than in the expanded sense recently devised by the IRS in an apparent attempt to avoid the requirements of the Freedom of Information Act.

<sup>7</sup> See sec. 301.6103(a)-3 of the Treasury Regulations on Procedure and Administration, promulgated under Executive Order 11650, 1972-1 Cum. Bull. 381, dated Feb. 16, 1972.

This change, promulgated on February 18, 1972 *without* opportunity for public comment or criticism, enormously broadens the definition of the term "return", so as to sweep within its scope almost any document in the hands of the Internal Revenue Service. As amended, the term "return" includes any oral or written information, in whatever form, "relating to" anything which, in turn, is "designed to be supplemental to or become part of a return." This definition is broad enough to include, and thereby exempt from disclosure, all the records and proceedings of the Internal Revenue Service. For example, it is currently being used by the Service to deny public access to the texts of IRS rulings, such as the ruling that approved the tax-free character of the ITT-Hartford Fire Insurance merger, and even the letter of technical advice that revoked that earlier ruling as a mistake.

Yet another factor contributing to the Service's resistance to public disclosure is a curious interpretation of the doctrine that communications between attorney and client are privileged. In the context of private attorneys dealing with clients, that doctrine is clear enough. But in the context of a Federal agency, application of that doctrine becomes more difficult.

If, as now seems to be the case, the Service takes the position that the Commissioner of Internal Revenue and his principal deputies are the "client", then virtually all communications between those officials and the thousands of attorneys employed by the IRS are arguably immunized from disclosure. Included in these communications are memoranda explaining final policy positions—such as General Counsel's Memoranda and Actions on Decisions—to which the public should have access precisely because the policies interpreted in those documents affect the pocketbook of every American.

It seems to me that a more reasonable interpretation of the lawyer-client privilege in the context of a government agency would treat the American public as the "client" of an attorney employed by the agency. That interpretation has the advantage of emphasizing that the Government attorney's highest loyalty is to the public interest; such an interpretation also seems likely to work in favor, rather than against, voluntary public disclosure of IRS information.

4. *Institutional pressures against disclosure.*—Study of the cluster of private institutions surrounding the Internal Revenue Service also helps to explain why the IRS has been so slow to obey the Freedom of Information Act.

The first and most important of these private institutions is the tax bar. I think it is fair to say that public scrutiny of the IRS, and public disclosure of IRS rulings and documents, is not perceived by most members of the private tax bar as being in their best interests.<sup>8</sup> If nothing more, the public scrutiny that is mandated by the Freedom of Information Act will tend to make tax practitioners' work more difficult, by (a) making Service personnel more cautious about possible mistakes, and (b) more reluctant, as a consequence, to act hastily in response to a tax practitioner's request for a ruling or other decision.

Increased IRS disclosure under the Freedom of Information Act is also likely to break up the "private law monopolies" that IRS secrecy has created and sustained. Because the IRS has not published many of its rulings, and because most of its basic policy documents are not published at all, many tax practitioners are unable to ascertain with clarity what the law is on a given subject—at least not without consulting a privileged few who have gotten an inside track in a particular area, by having worked for the IRS in the past, by having processed large numbers of private ruling requests or cases in a specialized area, or by hiring junior attorneys from the IRS who have specialized knowledge (and possibly specialized files).

In all these ways, some tax practitioners have gotten a hammerlock on clients who are interested in particular areas of the tax law. Adoption of a policy of broad public disclosure under the Freedom of Information Act would destroy these "private law monopolies" by making available to all tax practitioners the knowledge about IRS policies that can now be obtained by only a few. Those few obviously have a strong interest in the maintenance of IRS secrecy. Elimination of that secrecy would mean that, in the future, the only way to get a hammerlock on knowledge about a particular area of the tax law would be through hard work and native wit—rather than through a combination of prior government experience and careful collection of IRS leaks.

Surprisingly, some of the tax publishers are also among the institutions generally opposed to broader IRS disclosure. In the case of those publishers

<sup>8</sup> There are a substantial number of happy exceptions to this statement.

who specialize in the collection and circulation of IRS leaks, their reasons for opposing an end to secrecy are obvious: Broad disclosure would make generally and cheaply available what they now publish for a limited group and a high fee. In the case of other tax publishers, greater IRS disclosure will greatly compound their existing problem of collating and indexing IRS decisions—simply because there will be far more decisions to index. This is probably the reason why none of these publishers have sought to implement the Freedom of Information Act with respect to IRS documents; implementation of the Act will make their life more difficult, not easier.

5. *The weakness of public interest groups.*—The final factor accounting for IRS noncompliance with the Freedom of Information Act is the relative weakness of the public interest groups that scrutinize the IRS. When I left Treasury on January 20, 1970, to found Tax Analysts and Advocates and its companion group, Taxation with Representation, there was no organized public interest representation of taxpayers at the federal level. The situation is much better now, although much remains to be done. For example, our own group has filed only one Freedom of Information Act suit against the Internal Revenue Service—partly because we felt that the Service deserved time to reevaluate its policies, and partly for lack of funds. But it is clear that many more suits are going to be needed if the IRS persists in its intransigence regarding the dictates of the Freedom of Information Act.

Fortunately, the growing strength of the groups that are now focusing on federal tax questions makes it more likely that the courts will at last be given an opportunity to decide how the Freedom of Information Act applies to the IRS. But the cost is likely to be high—both in dollar terms and in terms of delay and frustration for all concerned. A better solution is a general reevaluation of IRS information policies, with the aim of bringing those policies into line with the growth in the law relating to the Freedom of Information Act.

## II. THE NEED FOR DISCLOSURE

The foregoing discussion sought to explain why the IRS has strongly resisted the dictates of the Freedom of Information Act. An unspoken premise running through that discussion is my belief that greater disclosure by the IRS would be a good thing—both for that agency and for the public. This is obviously not a premise that is accepted by everyone, and I would therefore like to take a few minutes to state the reasons why I believe government agencies should operate "in a fishbowl" to the maximum extent possible.

1. *Secret law is an abomination.*—The essence of a democracy is control by ordinary citizens over their government, and over the system of legal rules that government imposes. But during the past two generations, the Internal Revenue Service has built up an enormous body of secret law which is simply unavailable to the public, the tax bar, or anyone else, except in the form of leaks.

Included in this body of secret law are hundreds of thousands of unpublished private rulings, tens of thousands of which are classified by the Service as having precedential significance. Also included are thousands upon thousands of secret policy memoranda which constitute official interpretations of published regulations and other announcements. At present, the public is furnished with the regulation or announcement, but is denied access to the official IRS interpretation of the significance of that document. If Congress behaved similarly, statutes would be released to the public, but the related committee reports would be kept secret from all save those who enforced the statute. A system such as that would obviously be tailor made to create misunderstanding, suspicion, and confusion among those to whom the law applied.

I believe that the IRS owes the public the fullest possible disclosure of the legal materials that it uses internally to interpret and explain its published rules. If an IRS agent or attorney has access to a legal memorandum that interprets or explains the meaning of a published rule or decision, that internal memorandum should be equally available to the public. And if the IRS has arrived at a decision about how the tax law applies in a particular situation, that ruling should be open to public scrutiny, because it is, in itself, part of the fabric of our law.

2. *The Service needs to be "right the first time."*—Public scrutiny is one way to insure against slipshod work by government employees. If an IRS employee or his supervisor knows that his decisions will be subject to public scrutiny, he is more likely to be a bit more careful in his research, a bit more cautious in



choosing his words, and—as a result—a bit more likely to be correct in his final decision.

This is important, because the Service needs to be “right the first time” when it makes a decision. If, for example, the Service makes a mistake in a ruling with respect to Taxpayer A, thereby saving him a handsome amount in taxes, the word will gradually move along the grapevine to Taxpayers B, and C, and D, all of whom will demand similar treatment. Meanwhile, if these rulings are being issued in secret, as is generally the case now, public spirited persons in law schools, private practice, and elsewhere, will have no opportunity to comment, because they have no way to know about the existence of the ruling. In the end, the Service will find itself so “locked in” that it will be unable to rectify its mistake, save by act of Congress.

This is precisely what happened, for example, in the case of the so-called “production payment rulings”, which related to complicated tax minimization transactions by mineral producers. None of these rulings was ever published, so it was difficult to subject them to public scrutiny and comment. Yet by the time that Congress reversed them in 1969, those rulings were resulting in revenue losses of approximately \$20 million per year. Public scrutiny might have prevented the Service from issuing that mistaken set of rulings in the first place, and public comment would certainly have aided both the Service and Congress to correct those mistakes more quickly.

3. *Protection against improper political pressures.*—Like any federal agency, the Internal Revenue Service is subject to political pressures of various sorts. Some of these are legitimate and some are not. For example, I regard it as fully legitimate for a member of Congress to write to the IRS in response to a constituent inquiry. This is part of the ombudsman role that Congress has assumed as the federal bureaucracy has grown.

On the other hand, I regard as illegitimate the sort of political pressure that apparently led to the publication of Revenue Ruling 72-355, 1972-2 Cum. Bull. 532—the ruling that permitted major political donors in the 1972 campaign to avoid gift tax by breaking up their gifts into \$3,000 units. And I note that the District Court for the District of Columbia recently found that illegitimate political pressures influenced the denial by the IRS of tax exemption to the Center for Corporate Responsibility.<sup>9</sup>

The problem for the Internal Revenue Service, as for any federal agency, is to separate the illegitimate pressures from the legitimate. In dealing with this problem, the Service seems to have missed a very important point: public scrutiny and public disclosure are among an agency's best defenses against improper political pressures.

If an agency makes a habit of operating in a fishbowl, it is less likely that improper proposals will even be made—because the proponent will not want his request to become a matter of public record. And if the agency spreads its decisions promptly on the public record, thereby inviting public comment and scrutiny, it is far less likely that political favors can be conferred without adverse public comment. In this way, the very fact of public disclosure can strengthen a bureaucrat's hand when he is forced to deal with improper political pressures.

The full story about recent political pressures on the Internal Revenue Service has yet to be written. Among other things, the Joint Committee on Internal Revenue Taxation has yet to complete its examination of the files of the Service's now disbanded Special Service Staff. And although the Joint Committee has absolved the IRS from blame in its handling of the famous “enemies list,” the verdict on the “friends list” is not yet in. Furthermore, unless this Subcommittee, or some other branch of Congress, investigates the matter, the full story behind Revenue Ruling 72-355 and the Center for Corporate Responsibility ruling seems unlikely to come out. When and if the facts in these areas become known, I think that we will see more clearly the need to encourage the IRS to develop better defenses against political pressure. Public scrutiny and public disclosure are among the more important of those defenses.

Thank you.

Senator KENNEDY. Thank you for a helpful and useful statement to end our hearing. What would be your assessment, as someone who spends a great deal of time in observing the IRS, as to how they with-

<sup>9</sup> *Center or Corporate Responsibility, v. Schultz*, 73-2 U.S.T.C. par. 9517-8 (1973).

stood political pressures in recent times? What kind of rating would you give them?

Mr. FIELD. In all honesty I can only say to you, Senator, that all of the facts are not in. It seems to me that if I had to make a comment now, I would say that in the area of individual audits it appears from what has been published in the press and in congressional hearings that the Service withstood pressure very well. Johnnie Walters' testimony, for example, is that he took the second enemies list and put it in his safe and showed it to no one.

In the area of rulings, however, it seems to me that the picture is much less favorable and it is in that area that the facts have yet to come to public view. So as a consequence the only proper answer I can give you is that the Service's record seems to be a mixed bag. If we are dealing with the rules area, then it is fairly clear that the Service yielded to pressure in at least two important instances that are now matters of public record and that is the \$3,000 gift tax rule and the ruling on the Center for Corporate Responsibility. But if we are dealing with individual income tax returns, to this point it appears that the Service successfully resisted the pressures brought to bear on them.

Senator KENNEDY. Mr. and Mrs. Long, is there any comment that you would like to make?

Mr. LONG. We certainly appreciate the opportunity of representing unofficially a lot of little taxpayers. As we say, we feel if a person makes a reasonable effort to make their tax return correct, and I am not saying they always do, but they should not have to worry or dread an audit of the Internal Revenue Service. But at the present time I think 99 percent of the people in the United States that have had audits do not feel that way. They feel that they have to dread an audit. And we feel that there is something wrong somewhere. And we think that the basic facts that are brought out in the open will let Congress and everybody else know that IRS should make some basic changes in handling people that make a reasonable effort to have their tax returns correct.

[The following list of outstanding Freedom of Information Act requests to the IRS was subsequently submitted by Mrs. Long for the record:]

#### OUTSTANDING FREEDOM OF INFORMATION REQUESTS

Date of request	Further letters <sup>1</sup>	Brief description of records requested
Nov. 5, 1972.....	Dec. 5, 1972; (Dec. 15, 1972); Feb. 18, 1974; (Mar. 28, 1974); Apr. 25, 1974.	Our Nov. 5, 1972, request was to see noncurrent, pt. I materials of the Internal Revenue Manual from the historical file in the national office; however when we sought to see them in February 1974, materials were withheld (pending review) we have appealed to the Commissioner.
Dec. 16, 1972.....	(Jan. 9, 1973); Jan. 14, 1973; (Feb. 8, 1973); Feb. 10, 1973; (Apr. 12, 1973); Sept. 10, 1973; Dec. 18, 1973; Jan. 20, 1974; (Mar. 18, 1974).	Our Dec. 16, request was to see Internal Revenue Manual materials distributed to personnel handling the district conference function—IRS says it has not completed review of some of this material and we are still awaiting results of this review.
Sept. 21, 1973.....	Dec. 17, 1973; (Jan. 21, 1974); Jan. 31, 1974; (Feb. 27, 1974); Apr. 25, 1974.	We asked to see and purchase printed copies of IRS Documents 6183, 6185, 6194, 6195, 6197, 6199; IRS has not directly responded to our request to know if stock of these documents is on hand.
Aug. 28, 1973.....	(Sept. 18, 1973); Sept. 26, 1973.....	Xerox copies furnished by IRS in response to our Aug. 28, request for NO-CP-A-231, -233, -234 for fiscal 1973 not complete as we noted in our Sept. 26, letter—want those not furnished.
Aug. 29, 1973.....	(Sept. 21, 1973); Sept. 26, 1973; Dec. 17, 1973.	Request for fiscal 1973 tables from audit quarterly statistical report.

## OUTSTANDING FREEDOM OF INFORMATION REQUESTS—Continued

Date of request	Further letters	Brief description of records requested
Sept. 6, 1973	(Nov. 16, 1973); Nov. 25, 1973; Jan. 13, 1973; (Jan. 21, 1974); Jan. 31, 1974; (Mar. 1, 1974); Mar. 18, 1974; (Apr. 8, 1974); Apr. 25, 1974.	Records containing identification of national office recurring reports (currently updated).
Sept. 11, 1973	Jan. 13, 1974	Audit production report series described at ch. 500 of IRM 4810, Audit Reports Handbook.
Do	Dec. 17, 1973; (Jan. 3, 1974); phone calls (6); January-February 1974; Mar. 24, 1974.	Fiscal 1973 collection statistics.
Sept. 13, 1973	(Nov. 13, 1973); Nov. 26, 1973; Jan. 13, 1974.	Further information on 5.4 percent nonfilers in 1969 (re: U.S. News article of Sept. 17, 1973, p. 27); IRS denial was appealed to Commissioner Nov. 26, 1973.
Sept. 21, 1973	(Nov. 13, 1973); Nov. 26, 1973; Jan. 13, 1974.	Document 6007—Taxpayer Assistance; IRS denial on appeal to the Commissioner since Nov. 26, 1973.
Do	Dec. 17, 1973	Document 6035—Taxpayer Delinquent Accounts and Offers in Compromise Activity.
Sept. 22, 1973	(Nov. 13, 1973); Nov. 26, 1973	Document 5624—TCMP Delinquent Returns Survey; on appeal to Commissioner since Nov. 26, 1973.
Sept. 21, 1973	(Nov. 13, 1973); Nov. 26, 1973; Jan. 14, 1974; (Jan. 15, 1974); Jan. 30, 1974; (Feb. 15, 1974); Apr. 25, 1974.	Audit Suspense Digest—issues prior to 1972.
Sept. 27, 1973	(Nov. 13, 1973); Nov. 26, 1973; Jan. 14, 1974.	Document 5225—Income Tax Technical Field Conferences—denial on appeal since Nov. 26, 1973.
Do	Dec. 17, 1973	Document 5294.
Do	do	Document 5403.
Do	do	Unnumbered report series on "Taxpayer Delinquent Accounts," formerly included in document 5512.
Oct. 6, 1973	Dec. 18, 1973	Document 5203—Personnel analysis report.
Do	do	Quarterly statistical report, sec. 2.
Do	Dec. 18, 1973; Dec. 29, 1973; Mar. 18, 1974.	Fiscal 1974 audit and appellate statistical tables.
Do	(Nov. 13, 1973); Nov. 26, 1973; Jan. 14, 1974; Apr. 25, 1974.	Document 5342, issues subsequent to 1971 (audit statistics).
Oct. 9, 1973	(Nov. 16, 1973); Nov. 26, 1973; Jan. 14, 1974; (Jan. 30, 1974); Feb. 4, 1974.	Index to Internal Revenue manuals in IRS reading room; IRS replies not required to maintain since manual not affect the public; Feb. 4 letter to Commissioner is that IRS's official position?
Nov. 26, 1973	Jan. 1, 1974; (Jan. 30, 1974); Feb. 6, 1974; Mar. 18, 1973; (Apr. 8, 1974); Apr. 25, 1974.	Files containing form 2951—Reports Clearance.
Dec. 1, 1973	Jan. 2, 1974	NO-CP:A-326, -327, -358, -360.
Do	do	NO-ACTS:C-100—manpower utilization report.
Dec. 2, 1973	Jan. 2, 1974; (Jan. 28, 1974); Apr. 25, 1974.	Form 2040 files—field distribution schedules.
Dec. 3, 1973	Jan. 13, 1974	IRM 8(24)30—manual transmittals and tables of contents to Appellate Tolerance and Criteria Handbook.
Do	Jan. 14, 1974	Form 2061 files.
Dec. 4, 1973	Jan. 13, 1974	Form 3243, 3243-A approved by national office covering fiscal 1973.
Dec. 5, 1973	do	NO-CP:A341—summary of audit and jeopardy assessments.
Do	Jan. 13, 1974; (Jan. 18, 1974); Feb. 18, 1974.	NO-CP:A-337—regional review digest.
Dec. 15, 1973	Jan. 15, 1974; (Feb. 26, 1974); Mar. 17, 1974; (Apr. 8, 1974); Apr. 25, 1974.	Form 4001 files (printing and duplication requisition).
Do	Jan. 15, 1974; (Feb. 26, 1974); Mar. 17, 1974; (Apr. 8, 1974); Apr. 25, 1974.	Form 2087, 2088 files.
Dec. 29, 1973		NO-CP:A-127—170 audit technical time reports.
Do		NO-CP:A-231—regional fiscal 1973 figures (audits).
Do		NO-CP:A-114—report on large deficiency and overassessment cases.
Do		Fiscal 1974 collection statistics.
Do		NO-CP:A-223—Dif classification activity monthly report.
Do		NO-CP:A-137 "quarterly report on referrals and coordinate examinations."
Jan. 2, 1974	(Mar. 4, 1974); Apr. 25, 1974	Library card catalogs in IRS Seattle office.
Jan. 13, 1974		Manual transmittals and tables of contents to IRM 1279 Administrative Tolerance and Criteria Handbook.
Jan. 20, 1974	(Jan. 31, 1974); Feb. 4, 1974	Current tables of contents to Internal Revenue Manual.
Jan. 21, 1974	(Feb. 19, 1974); Apr. 2, 1974	ADP Handbook 2 materials.
Do	do	Stock on hand of MT 4(13)00-1 (7-10-73).
Jan. 20, 1974	(Feb. 26, 1974); Mar. 17, 1974; Apr. 25, 1974.	Reporting forms of cases docketed in USTC for period ending December 1973 covering the Seattle area which were used to generate report series NO-CP: AP-29.
Feb. 4, 1974	(Feb. 28, 1974); Mar. 23, 1974	Form 7000, closed control card files (FOI requests).
Feb. 16, 1974	(Apr. 4, 1974); Apr. 25, 1974	Current CDE memorandums or directives issued by Collection Division chiefs, western region, plus current indexes and listings thereto.

## OUTSTANDING FREEDOM OF INFORMATION REQUESTS—Continued

Date or request	Further letters <sup>1</sup>	Brief description of records requested
Mar. 23, 1974	(Apr. 8, 1974); Apr. 25, 1974	ADP Handbook 329-729.
Do	Apr. 25, 1974	Obsolete and superseded IRM 4100, 4232, 4234, 4300, 4(10)00, 4(12)10.
Do	(Apr. 4, 1974); Apr. 25, 1974	Pt. V of Internal Revenue Manual—inspect Seattle.
Do	do	Obsolete and superseded IRM 4500 records.
Apr. 11, 1974		Letter to Commissioner asking for response to FOI requests (previous) for audit, appellate and collection statistics—to view immediately.
Apr. 25, 1974		Preface and tables of contents to Register of Internal Revenue Studies prior to June 30, 1973.
Do		Current forms in forms 7000-7100 series.
Do		Numerical history files of current forms 6000-6999.
Do		Revoked portion 120 of IRM 5170 per MS 51G-96.
Do		Obsolete and superseded pt. V IRM materials.

<sup>1</sup> A date in parenthesis signifies an IRS response.

MR. CAPLIN. I think these hearings have been helpful and I am pleased that you are going to give the Internal Revenue Service an opportunity not only to be responsive but to respond. I think that they can eliminate much of what has been discussed today. It is very difficult to evaluate them because of the obstacles on getting information about the IRS.

On the point you raised with Mr. Field on the question of political pressures and the like, it is very difficult thereto to make any sort of sensible judgment unless you are able to discuss this with the officials involved. I think the impression is that the attempts at political pressure have been greater than before. And I think that this relates very heavily to personnel within the Internal Revenue Service, to the very heavy turnover of assistant commissioners, and the actual placement of particular officials within the Revenue Service or the Treasury Department. This has created concern among those who are very interested in good government. And this is a legitimate area of inquiry as well.

SENATOR KENNEDY. Well I think in these concluding comments that Mr. Field has pointed out the importance of compliance with the Freedom of Information Act in preserving the integrity of the Service from improper influence; Mr. and Mrs. Long have pointed out how important the act is just in terms of knowledge and understanding for the American people and small taxpayers, to give them the opportunity to know what they owe and why they owe it, and what they have to pay; and I think Mr. Caplin has pointed out a number of extremely important and useful things that could be practically applied to insure the integrity of the Service. I know he has always been committed to that.

I would like to mention to the panel that we have amendments to the Freedom of Information Act, S. 2543, that have been reported out of this subcommittee and are now before the full Judiciary Committee. S. 2543 doesn't expand greatly the areas which would be covered, but it does provide some meaningful teeth so that the information which will be of such importance and vital significance to the American public, and will also really serve the basic interest of the Service, will be made available. And I am very hopeful that legislation can move forward and we can enact it in this session.

The House has passed similar legislation (H.R. 12471) overwhelmingly and I am hopeful we can move that legislation.

Senator THURMOND. I know you have followed this morning's hearing with a great deal of interest.

Senator THURMOND. Mr. Chairman, I want to commend Mr. Caplin, Mr. and Mrs. Long, and Mr. Field for coming here today and presenting their views and I am sure they have made a fine contribution to the subject under discussion.

Senator KENNEDY. The subcommittee will stand in recess.

[Whereupon at 12:45 p.m. the subcommittee recessed subject to the call of the Chair.]



# TO AMEND THE FREEDOM OF INFORMATION: IRS

WEDNESDAY, JULY 31, 1974

UNITED STATES SENATE,  
SUBCOMMITTEE ON ADMINISTRATIVE  
PRACTICE AND PROCEDURE OF THE  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2228, Dirksen Senate Office Building, Senator Edward M. Kennedy (chairman of the subcommittee) presiding.

Present: Senator Kennedy (presiding).

Also present: Thomas Susman, counsel; Ann Phillippi, staff assistant.

Senator KENNEDY. The subcommittee will come to order.

This morning the Senate Subcommittee on Administrative Practice and Procedure focuses on an issue central to the maintenance of public confidence in the IRS: The public disclosure policies and practices at the Internal Revenue Service. The Internal Revenue Service, more than any other Government agency, depends on continuing public trust and confidence to fulfill its responsibilities. Our system of taxation does not rely primarily on punishment or reward, but depends on the voluntary cooperation of all citizens in computing and remitting each year the taxes they owe the Government. Yet, public trust is not to be taken for granted; it must be nurtured and secured daily by officials and employees of the IRS at all levels.

Unfortunately, the public has been made all too aware that during the past 5 years the White House has repeatedly attempted to interfere with and influence the activities of the Service in order to obtain political favors for its friends and leverage over its enemies. Earlier this month, the House Judiciary Committee released a volume of evidence containing 26 numbered paragraphs detailing White House interference with the activities of the Internal Revenue Service. Reports on tax investigations of political figures were obtained from the Service and released to the press. Attempts were made to install political operatives in high level IRS positions. Suggestions were made that the IRS be turned off on White House friends and turned on to White House enemies. Campaign workers and contributors were targeted for audits, and activist organizations were marked for demise through the denial of tax-exempt status. In April, Senator Lowell Weicker testified before our subcommittee regarding these White House attempts to influence the IRS, and on the establishment of a special services staff within the IRS to collect information on activist organizations and individuals.

I think that it is significant that only with the most recent disclosures about the IRS—disclosures that the Service has not allowed

itself to be used for political purposes—will restoration of full public confidence in that agency become possible. These disclosures show that the Internal Revenue Service has emerged from the quagmire of Watergate with its basic integrity intact. It is to the credit of the Service that its highest officials resisted the onslaughts of White House pressure and intimidation. Nevertheless, serious questions have been raised concerning the extent to which the White House should have any access to or influence over the IRS. Responding to those questions should constitute a high priority for both the Service and the Congress. Politics and political considerations should have no place in the administration and enforcement of our tax laws.

Ironically, while the American people were receiving an impression of a Service responsive to requests from the White House for confidential taxpayer information, they were getting an equally strong impression of a Service unresponsive to public requests for information required to be disclosed under the Freedom of Information Act.

Of course, we must never lose sight of the need for protecting personal privacy where administration of the tax law is involved. Taxpayers reveal in their tax filings matters of intimate personal detail: this information must be protected from public disclosure. It must also be protected from improper disclosure to the White House, to the Department of Agriculture, to other Government agencies, and to the Congress. We would not have it otherwise, and the law requires no less.

But the FOIA strikes a balance that protects against invasions of personal privacy and also insures the public's right to know what our Government is doing. The act stands as a guardian against secret administration of the law by Government agencies. It opens the policies and actions of Government to greater public debate and participation. It lets the taxpayer know how the Government is spending his money. It throws sunshine on official conduct, providing a healthy atmosphere for honesty and efficiency to thrive.

The Internal Revenue Service should have a special interest in utilizing public disclosure of its rulings and instructions and statistics to prove to the public that it is administering the law fairly and evenhandedly. It should want to set the record straight on its policies, its procedures, and on the results of its collection and enforcement activities. And it should welcome the public debate and even the constructive criticism to which all lasting and significant institutions in a democratic society are subject.

This morning we will look at IRS compliance with the Freedom of Information Act. We will examine the Service's procedures for handling requests for information. We will look at the basic policy issues underlying the release of specific types of information, including rulings, opinions, statistics, reports, and instructions. We will analyze the implications of withholding versus releasing information, in terms of the efficiency of the Service and public confidence in it. And we will examine some basic procedural questions concerning the relationship of the IRS to the Congress, the White House, and the Treasury Department.



In April we heard from public witnesses, who generally criticized the Service for undue delays in responding to requests for information and for adopting an overprotective policy of withholding materials to which the public has a right. This morning we will hear from Commissioner Donald Alexander, who will testify on the efforts being made by the IRS to be more responsive to the mandates of the Freedom of Information Act in light of public demands for greater openness in Government.

Commissioner Alexander, we welcome you here this morning.

**STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE SERVICE; ACCOMPANIED BY MEADE WHITAKER, CHIEF COUNSEL; LAWRENCE B. GIBBS, ASSISTANT COMMISSIONER (TECHNICAL); ANITA F. ALPERN, DEPUTY ASSISTANT COMMISSIONER (PLANNING AND RESEARCH); CHARLES A. GIBB, CHIEF, DISCLOSURE STAFF, OFFICE OF ASSISTANT COMMISSIONER (COMPLIANCE); HAROLD T. FLANAGAN, DIRECTOR, DISCLOSURE DIVISION, OFFICE OF CHIEF COUNSEL; AND BURKE W. WILLSEY, ASSISTANT TO THE COMMISSIONER**

#### ASSOCIATES INTRODUCED

Mr. ALEXANDER. Thank you, Mr. Chairman.

I would like to introduce the others with me. On my immediate left is Meade Whitaker, Chief Counsel of the Internal Revenue Service. Left of Mr. Whitaker is Anita Alpern, Deputy Assistant Commissioner (Planning and Research). On my immediate left is Lawrence B. Gibbs, Assistant Commissioner (Technical), and on Mr. Gibbs' right is Burke Willsey, Assistant to the Commissioner.

Now, also in the room are two others who have played a major role in the field that we look forward to exploring with you this morning, Mr. Chairman. First is Harold Flanagan, the director of our disclosure division, office of chief counsel. Would you stand up, please? And Charles Gibb, the chief of the disclosure staff of the Office of Assistant Commissioner (Compliance).

Mr. Chairman, we welcome the opportunity to discuss this very important issue. Actually it is a group of issues which are closely related. I am in agreement, Mr. Chairman, with your introductory statement, in particular the portion that pointed out that our system of taxation depends on the voluntary cooperation of all citizens in computing and remitting each year the taxes that they owe the Government. We are aware of our responsibility to be responsible and to be responsive and we are aware of the fact that our system of taxation, which we consider the best in the world, depends not only upon the public acceptance of the general reasonableness and fairness of the law but in particular upon the public's acceptance of the reasonableness, the even-handedness, the nonpolitical nature, of the tax administration function entrusted to us.

Mr. Chairman, I have a statement which I do not propose to read but with your permission, I hope that it will be inserted in the record.

Senator KENNEDY. It will be so inserted.  
[Mr. Alexander's statement follows:]

STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE  
BEFORE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE COMMITTEE  
ON THE JUDICIARY

Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to respond to the testimony of witnesses who appeared before this Subcommittee in April, as well as to inform the Subcommittee on the actions we have taken to comply with the Freedom of Information Act. We welcome an opportunity to exchange ideas on this subject of mutual interest and concern, and on any other subjects relating to IRS activities which were discussed during your recent hearings.

First, Mr. Chairman, I would like to call attention to your remark on April 1, when you said:

"... the compliance of Americans with their tax laws has always been the envy of the free world. It is equally true that the reason they comply is because they believe that our system of taxation is founded upon fair, uniform and even-handed enforcement of the law."

I wholeheartedly agree with your statement. It sums up what we try to do—administer the tax laws in a fair, uniform and even-handed manner. The very foundation of the American tax system is the faith that taxpayers have in the basic fairness of that system.

I am firmly convinced, on the basis of all information available to me, that most Americans are honest and diligent in meeting their tax obligations. Former Commissioner Caplin indicated in his testimony before this Committee that a distinguishing characteristic and a principal strength of the American tax system is its self-assessment feature—a tax system that depends on voluntary compliance. I agree. This system depends upon public trust in IRS, and I am ever mindful of this special responsibility upon us.

TAX RETURN CONFIDENTIALITY

As you know, there are two distinct types of IRS records: the individual tax returns and related information, and also documents developed to assist in performing tax administration functions. Since 1870, with few exceptions, tax returns have been held confidential. I believe that they should continue to be so. In fact, in my testimony of August 3, 1973, before the Foreign Operations and Government Information Subcommittee of the House Committee on Government Operations, I said:

"Code section 6103, however, states that tax returns constitute public records, except as otherwise limited. . . . *I suggest that a better approach is precisely the opposite: tax returns should be confidential and private, except as otherwise clearly specified.*"

Legislation to restrict those persons and organizations who may inspect tax returns for other than tax administration purposes is needed and I hope that Congress will carefully consider such action. We should help ensure the continued confidentiality of tax returns, and the preservation of basic rights of taxpayer's privacy.

On the other hand, the term "public records," may more appropriately describe most of the documents which have been developed to assist in performing tax administration functions. Internal Revenue Manual instructions and training course materials comprise the major portion of such documents. This type of material properly falls under the Freedom of Information Act provisions.

I know that compliance with this Act is an IRS responsibility, and I want to emphasize that the IRS is firmly committed to abide by the Freedom of Information Act and to follow it.

I also think that it is important for the Subcommittee and the public to understand the significant steps we have already taken in this regard. Therefore, it is appropriate at this juncture to discuss the allegations made before this Subcommittee in April on the Freedom of Information issue. While many specifics were recited in connection with this subject witness testimony seemed to highlight four areas of criticism: prompt disclosure of Manual materials, publication of statistical data, general Freedom of Information delays and inordinate search and copying charges, and political influences in IRS activities.

## DISCLOSURE OF MANUAL MATERIALS

First, it was alleged that IRS had dragged its feet in implementing the law—to a point, in fact, where “deliberate noncompliance” could be inferred. I deny this. Enactment of the Freedom of Information law presented us with a major and time-consuming task. As an agency charged with an enforcement responsibility, it was not an easy matter to review, for example, nearly 45,000 pages of Manual material to determine what, in our judgement fell within the FOI definition and what did not. Add to this a multitude of reports, statistical data, miscellaneous materials and a constant flow of new and revised procedures, and you can get an idea of the mammoth unbudgeted workload we faced. Significant actions have been taken that will help us to fully meet our Freedom Information responsibilities. For example:

1. After determining that the Internal Revenue Manual, with the exception of tolerances, investigative techniques and other law enforcement materials, constituted an administrative staff manual we went through an intensive review to determine which information was to go into our Freedom of Information Reading Room. The bulk of it was released. As of July 26, there were exactly 36,453 pages or 81.2% of the current Manual in our Freedom of Information Reading Room. All of this material and any future changes are being made available to the Library of Congress. Much of the Internal Revenue Manual is also published for commercial distribution by two private concerns. One of these concerns publishes weekly a listing of materials released. A review of their reports for the past six months indicates that extensive new materials have been released almost every week. In the past month alone over 2,000 pages of Manual material has been released.

2. We announced on May 7, 1974 that we will not accept comments submitted in response to proposed regulations as confidential. We will presume that every comment submitted is intended to be subject in its entirety to public inspection and copying.

3. Instructions have been issued to remove the term “Official Use Only” from all portions of the Internal Revenue Manual (other than Law Enforcement Handbooks) as soon as the Manual can be reprinted. Field offices have been notified via telegram that declassified documents are to be released even though they may have been originally classified as “Official Use Only.” The quick issuance of Manual Transmittals are being used to keep field offices completely and currently informed as to which documents have been released. In addition, any alleged unauthorized disclosures are being checked with the National Office prior to starting any investigations.

4. Each Assistant Commissioner has been instructed that he is responsible for maintaining our public indices current for each part of the Manual issued by his activity.

In addition, to improve the quality of our disclosure and Freedom in Information work, we have established a new Disclosure Division in the Office of Chief Counsel. One of its principal responsibilities will be to help IRS resolve Freedom of Information legal problems as quickly as possible. Since prior testimony implied there is a large number of unfavorable court decisions against the IRS I believe it is worthy of note that of the cases disposed of at the district court level 12 have been either decided in favor of the Service or voluntarily dismissed; only 5 cases have been decided in favor of the plaintiffs.

Prior testimony has also suggested that IRS has released only one-third of its Manual to the FOI shelves. This is simply not so. Apparently, witnesses estimated the proportion of the Manual in the Reading Room by comparing the feet of shelf space used to file the Manual in the Internal Management Documents Division with the feet of the shelf space in the Reading Room. You can't measure a book by its cover. Nor can you measure the volume of released material in our Reading Room in terms of feet. The Internal Management Documents Division, to facilitate processing and distribution, puts each handbook in a separate loose-leaf binder; the Reading Room, on the other hand, files several handbooks or several related parts of the Manual in one loose-leaf binder. Thus, the binders and the resulting shelf space used in the two areas are simply not comparable. At the time these statements were made, we estimated that about three-fourths of the current Manual—not the stated one-third—was in the Reading Room.

Our current project is to review all of the remaining material to determine which parts contain tolerances, investigative techniques, and other law enforce-

ment materials the knowledge of which would enable would-be tax evaders to escape detection. This material is being removed. Under this project, which is nearing completion, additional material will become available soon. I might also point out the Manual has been reduced some 5,000 pages by deleting obsolete materials, reducing the number of Manual Supplements, and removing the AT & F procedures which are no longer a part of IRS.

#### PUBLICATION OF STATISTICAL DATA

A second charge dealt with statistical data. Now it is true that we have ceased publishing a number of our prior issuances. In large part, this resulted from our implementation of OMB Circular A-40 Revised, dated May 3, 1973, Subject: Management of Federal Reporting Requirements. Among others, the purpose of this Circular was to ensure: "the implementation of effective controls on all reportings including objective cost effectiveness evaluation of reporting requirements; and the definition and assessment of reporting needs. . . ." As a result of our internal review, a number of our statistical compilations were found to be either no longer required or duplicative and, thus, were either abolished or combined with others. We see no sense in wasting the taxpayers' money to compile reports and data not necessary to sound tax administration.

Some other reports were outdated and in the process of being replaced because of the implementation of our data retrieval system (IDRS). This was particularly the case in the Collection activity where phase-in to the new system took place during 1973, making former compilations meaningless. I might add that we stopped dissemination of Collection's statistical data to our field offices, and withdrew the data from our Reading Room, because of necessary basic data changes and non-comparability with prior reports.

We believe we have a responsibility not to manage our organization on the basis of statistics. Therefore, we have eliminated numbers for numbers sake, reports that were mere paper-pushing and served no useful purpose, and confined our reports to the minimum needed. During fiscal year 1974 we cancelled over 300 reports. This has resulted in savings to the taxpayer of over \$4.2 million.

#### FREEDOM OF INFORMATION DELAYS AND COSTS

The third major Freedom of Information area of witness criticism concerned IRS's alleged non-responsiveness and delays in replying to public inquiries for material while charging inordinate sums for the data finally provided.

It is true that we have not acknowledged or responded to all FOI correspondence as promptly as is desirable, although our 1973 records indicate that much of the correspondence was answered within one or two days after receipt. To help ensure prompt acknowledgement of all requests under the Freedom of Information Act, a new form, M-6111, has been developed and recently put into use. I should also point out that those requests that take the longest to reply to are far from routine. In some instances we are unable to identify from the request what is wanted or the record does not exist. In other instances, requests involve materials not previously considered by our Freedom of Information technicians. The request must be analyzed, materials identified and secured, and a determination of availability made. This takes time.

Typically a request of this type is for all internal memoranda, reports, directions, orders, guidelines or other expressions of policy generated in connection with the Service's consideration of a particular tax issue. Processing such a request could require a search of various National Office components as well as Regional and District Offices. We find that in many cases this type of request is being made by a taxpayer who is involved in civil or criminal tax litigation and the apparent purpose of the request is to circumvent Federal Rules of Civil and Criminal Procedure. Of the twenty-three suits filed against the Service from 1970 to date, five were brought by persons with criminal tax cases pending and six were brought by taxpayers for their own investigative files after a tax investigation had been commenced. In view of the magnitude of the search required to be responsive to such requests, large amounts of both resources and manpower must be expended. As we develop additional expertise with the Freedom of Information Act as it applies to specific material, however, it is possible that these types of requests will be more expeditiously processed.

As to the matter of fees, we believe ours to be reasonable and we are continually looking into additional ways to reduce them. As an example of our

intentions in this area, I have recently requested my staff to study all user charges, including photocopying fees, related to the copying of tax exempt organization returns. By law these returns are available to the public, and the copying fees are transmitted to the National Archives.

We have recently had it brought to our attention that these charges are inconsistent with Freedom of Information fees. We have looked into this matter, and the copying costs will be reduced. I want to assure the Committee that the Service wholeheartedly subscribes to the principle of making information available to the public at the lowest possible cost. In all instances, we will strive to make our fees as reasonable and uniform as possible.

In summary, we are not attempting to deprive the public of what the public should have. Far from it. The bulk of our Manual is public; our annual report lays out in detail, with numerous statistics, what we have done and how we have done it; publications are available explaining our audit and collection functions; about 100 taxpayer publications are available explaining various facets of the law; and our Statistics of Income program results in the publication of numerous volumes of data each year.

Only a limited amount of information is not available—part of it involving taxpayer privacy and the remainder involving our enforcement tactics and strategy. Some people would like information about other taxpayers' tax affairs. It is illegal for use to reveal it and we do not intend to do so. Other people would like a road map for tax evasion. Supplying such a map would materially hinder the Internal Revenue Service in administering and enforcing the tax laws effectively and responsibly. We would be derelict in our duties if we supplied it.

#### POLITICS IN IRS

I would like to turn now to allegations that the decisions of the Internal Revenue Service are subject to political considerations—an allegation that questions the very integrity of the Service and its ability to administer our voluntary compliance system in a fair, uniform and even-handed manner.

The IRS has spent the last 22 years—since its reorganization was approved by Congress—trying to ensure a non-political, non-partisan, career service approach toward tax administration, and I believe it has achieved just that. All indications are that we have strongly resisted pressures to do otherwise.

The executives of the Service, with the exception of the Commissioner, are career civil servants. We are selecting individuals with complete integrity and carefully training them. Under the management of executives like these, it is exceptionally difficult for those seeking to abuse procedures to succeed, and our procedures, which involve frequent reviews and a diffusion of managerial authority, almost defy abuse.

As to my own position, I have stated for the record before and I wish to state now that politics have no part in Internal Revenue Service decisions. Political views are irrelevant. Political activities will not be indulged in or permitted in any way. Since I have been in office no political pressure has been brought upon me to start an audit, stop an audit, start any other enforcement process or affect any audit or other process in any way. If such pressures were instituted, I would not give in to it. If I were ordered to do so, I would refuse to obey the order.

This completes my opening statement. We will be pleased to respond to questions and furnish any additional information the Committee may request.

#### NO POLITICAL PRESSURE EXERTED

Mr. ALEXANDER. I would like to touch first, Mr. Chairman, upon the problem of political interference and influence in the activities of the Service and political abuse of, or efforts to abuse, the processes of the Service.

I want to join with you in your concern over this vitally important problem and thank you for your statement that the disclosures recently made show that the IRS emerged from Watergate with its basic integrity intact. I think that is a tribute to my predecessors, Mr. Thrower and Mr. Walters, and to Secretary Shultz, and I am proud to follow them and to have worked with Secretary Shultz, one of the finest men I have even known.

Since I have been in office, Mr. Chairman, no effort whatever has been made to force me to start an audit, stop an audit, affect an audit, or affect any other investigatory process of the Internal Revenue Service. No political pressure has been exerted upon me. If it were, I would resist it and refuse to abide by any such pressure. If ordered to do so, I would disobey the order.

Senator KENNEDY. Does that include any contact from the White House at all?

Mr. ALEXANDER. In connection with the audit of the President, which was discussed at length in volume 10 of the House Judiciary Committee proceedings, there was contact with the White House in that I sent over the President's tax returns at the request of the White House. The White House and no one in it has inquired of me with respect to tax information of other taxpayers, inquired of me with respect to audits of other taxpayers. I am putting in a new procedure, Mr. Chairman, under which any such inquiries would be referred to my office, and would have to be made in writing. The right to know, the right to tax information, on the part of the White House exists under present law.

Senator KENNEDY. Let us be fair about this. Were there any contacts made from the White House at all, maybe on rulings or any of these categories? I suppose we also ought to ask whether you have had contacts from Capitol Hill.

Mr. ALEXANDER. Oh, yes.

#### WHITE HOUSE CONGRESSIONAL ACCESS

Senator KENNEDY. I am also interested in finding out whether you feel the procedures, you have developed during your term of office ought to be actually put into law, and if you feel that they can be strengthened. I am also interested whether, for example, there is a procedure for listing contacts that are made by Members of Congress. I am interested in this whole area, the procedures which are being followed, and whether you feel that they have to be institutionalized in terms of legislative action.

Mr. ALEXANDER. Mr. Chairman, this is part of a broader issue which is spelled out in your opening statement, the basic right of privacy of tax returns and tax-return information and the protection of that right of privacy, striking a balance between the protection of the right of privacy and the public's right to know and the right of Congress and the White House when petitioned by citizens to see whether they are being fairly treated and whether our procedures are being fairly followed, is a difficult and complex matter. Part of the problem is keeping a record, and you can be sure that we are doing that. Our current procedures call for that, but a future Commissioner might change those procedures if he or she chose to do so. I hope a future Commissioner would not.

Part of the problem is involved in the aspect that you mentioned. Senators and Congressmen are frequently asked by their constituents to look into tax and other matters concerning the citizens' relations with their Government, and that is particularly true in IRS because we have so many relations with so many citizens and in so many ways. You should have that right to look into the matter. You should have that right to inquire whether our procedures are being followed,

are being applied objectively, but I am sure that Senators and Congressmen do not want to assert any claim to change any of our judgments from a judgment which would objectively be applied to the particular situation to a judgment which turns not on the facts of the situation but on fact of the inquiry itself.

Now, there, under the present law there is no legal safeguard, subject to my chief counsel overruling me, against abuse of process other than the general provisions of law which can make abuse of process a criminal act.

Those provisions of law might well be reviewed and broadened and we are asking, Mr. Chairman, that Congress review the right of access to tax information. We think that taxpayer rights of privacy need strengthening in the law. We think that certain changes in the law are in order to strengthen these rights of privacy. I so testified before the House Government Operations Committee last August and it is the position of the Vice President's Committee on Privacy, as I understand it, that these rights, these basic rights of privacy, of tax returns and tax-return information, should be protected more than they are by current law.

Senator KENNEDY. Let us get somewhat more specific. You have regulations now covering contacts between the White House and the agencies, is that correct?

Mr. ALEXANDER. We do not have such regulations.

Senator KENNEDY. What do you have? Do you just have set procedures?

Mr. ALEXANDER. We have procedures. The law itself says the tax returns are open on order of the President. It has been the position of the legal advisers to the Commissioner of Internal Revenue for a number of years that that law means that the President, the White House, has access to tax-return information. This is discussed at length in the April 16, 1970, Congressional Record, which I would like to supply for the record, if I may.

Senator KENNEDY. You may.

[The material referred to follows:]

#### PRACTICE BY EXECUTIVE BRANCH OF EXAMINING INDIVIDUAL TAX RETURNS

Mr. WILLIAMS of Delaware. Mr. President, I wish to discuss a matter which has been raised in the press and the Halls of Congress in the past few days, and on which there appears to have been a certain element of misunderstanding. I shall, to the best of my ability, review it from the beginning to show how the practice of examining tax returns by the executive branch has been conducted during the preceding administrations as well as the manner in which it is being conducted under this administration.

This statement is going to be made as nearly as possible without trying to project the argument into the political arena. I think such projections are most unfortunate on a question which is so vital to so many people. But now that it has been projected on a false basis before the public I think it should be clarified. That is the reason I ask the Senate to bear with me for just a short period of time, during which time I shall review the procedure followed by the executive branch during the present as well as the past two administrations.

This argument started on April 12, 1970, and I am going to read the press release as it was then given by Mr. O'Brien. The press release, dated Washington, D.C., April 11, 1970, reads:

#### O'BRIEN CHARGES VIOLATION OF FEDERAL LAW BY NIXON ADMINISTRATION IN MOLLENHOFF ACCESS TO INCOME TAX RETURNS

WASHINGTON, D.C., April 11, 1970.—Lawrence F. O'Brien, Chairman of the Democratic National Committee, today charged that the Nixon Administration's

practice of turning over confidential federal income tax returns to a White House aide violates federal law and Treasury regulations governing the confidentiality of tax returns.

"Federal law and regulations protect the individual taxpayer's right to privacy and such indiscriminate access by a political operative in the White House is a clear violation of the legal rights of American citizens," O'Brien said.

"I call upon President Nixon to terminate immediately this illegal access of his personal staff to confidential tax returns of 80 million Americans," O'Brien said.

"If this action is not taken voluntarily," O'Brien added, "we are prepared to initiate legal action that will end this practice."

O'Brien's statement was based on a legal opinion signed by Mortimer M. Caplin and Sheldon S. Cohen, former commissioners of the Internal Revenue Service, and Mitchell Rogovin, former Assistant Attorney General for Tax Division and former Chief Counsel Internal Revenue Service.

The full text of the legal opinion submitted by Caplin, Cohen, and Rogovin to O'Brien is attached.

"I asked for this opinion upon learning of the Internal Revenue Service's practice of turning over confidential income tax returns to Clark Mollenhoff, special counsel to the President, on a 'need-to-know' basis," O'Brien said. "The views of these recognized tax experts leave little doubt as to the illegality of the procedures which now are being followed."

"It is particularly troublesome to learn of this practice when so many millions of Americans are at this moment pouring over their individual income tax returns and are candidly disclosing personal information of the utmost sensitivity," O'Brien said.

"Only immediate action by President Nixon to stop these illegal procedures will restore the American people's confidence in the Internal Revenue Service, as well as demonstrate the willingness of the Nixon Administration to obey federal law and regulations in the conduct of its own affairs," O'Brien concluded.

I repeat one quotation of Lawrence O'Brien's release:

"I call upon President Nixon to terminate immediately this illegal access of his personal staff to confidential tax returns of 80 million Americans," O'Brien said.

"If this action is not taken voluntarily," O'Brien added, "we are prepared to initiate legal action that will end this practice."

O'Brien's statement was based on a legal opinion signed by Mortimer M. Caplin and Sheldon S. Cohen, former commissioners of the Internal Revenue Service, and Mitchell Rogovin, former Assistant Attorney General for Tax Division and former Chief Counsel, Internal Revenue Service.

I now read the letters which was attached to Mr. O'Brien's April 11 statement. The letter is dated April 9, 1970. It is addressed to Mr. Lawrence F. O'Brien, the chairman of the Democratic National Committee, 2600 Virginia Avenue NW., here in Washington:

APRIL 9, 1970.

MR. LAWRENCE F. O'BRIEN,

*Chairman, Democratic National Committee, Washington, D.C.*

DEAR MR. O'BRIEN: It has been reported that an aide to the President currently has access to federal income tax returns upon his written request. You have asked for a legal opinion on whether this reported arrangement with the Internal Revenue Service comports with existing law and regulations. It is our legal opinion that such access is not in conformity with existing law and regulations relating to disclosures of tax returns.

Section 6103 of the Internal Revenue Code sets up the statutory procedures necessary to insure that tax returns and the confidential information appearing thereon are not made available to people who have no legitimate interest in the return. First enacted in 1910, this central provision of our present law provides that returns will be open for inspection "only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President." The inviolate nature of tax information is fundamental to our tax system, not only in the name of privacy, but also to insure increased and more accurate taxpayer compliance. As to the latter, more accurate reporting on income tax returns appears to bear a close relationship to the degree of confidence in which the information is held by the Internal Revenue Service.

The regulations promulgated under section 6103 provides in detail the manner and circumstances under which tax returns may be legally inspected by the public,



state tax officials, Treasury officials, Executive Department officials, U.S. Attorneys and Department of Justice attorneys, Executive Branch agencies, and Congressional Committees. Specific requirements for inspection of federal income tax returns have been prescribed in the regulations to intentionally make it burdensome to secure inspection of such returns. This is in order to maintain the confidentiality of such returns except in unusual circumstances, melding the legitimate needs of government with the right to privacy of the individual. For example, with respect to inspection of returns by executive departments' officials other than the Treasury Department, the request must be in writing. It must be made by the head of the Agency requesting the opportunity to inspect the return, the request must relate to a matter officially before the Agency head, it must specify the taxpayer's name and address, the kind of tax reported, the taxable period covered, the reason why inspection is requested, and the name and official designation of the person by whom inspection is to be made.

The federal official in the news report is Special Counsel to the President and as such, he is an employee of the Executive Office of the President. Reg. Sec. 301.6103(a)-1(f) covers access to tax returns by such an employee. Under this regulation, the President would be the only Executive Branch official with the authority to request the Commissioner to make tax returns available to employees of the Executive Office of the President. Such a Presidential request would presumably have to comply with the various requirements of the regulations detailed above.

It has been suggested that since the employee in question acts as agent for the President in matters of investigation, no written request by the President is required. We are unaware of any theory of law which would support such an argument. Indeed, this type of argument has been specifically rejected by the very language of the regulation.

The criminal sanction relating to the disclosure of confidential tax information is found in section 7213 of the Code. It makes it a misdemeanor for any federal employee to divulge tax information except as provided by law.

If tax returns are made available in a manner not in conformity with section 6103 of the Code and the regulations, it would appear that such divulgence of tax information is not as provided by law.

A copy of section 6103 and the pertinent regulations are attached for your convenience.

Sincerely,

MORTIMER M. CAPLIN.  
SHELDON S. COHEN.  
MITCHELL ROGOVIN.

As I mentioned earlier, Mr. Caplin was the Commissioner of Internal Revenue under the Kennedy administration; Mr. Cohen was the Commissioner of Internal Revenue under the Johnson administration; and Mr. Rogovin was an employee, first in Treasury and then in Justice, under both administrations.

When this dramatic statement was made by Mr. O'Brien there was understandably a lot of concern expressed by members of the press, by Members of Congress, and by millions, I daresay, of American citizens as to what was happening here in Washington and whether the Internal Revenue Service was being turned into a Gestapo, as the allegation of the chairman of the Democratic National Committee would indicate.

The chairman of the Joint Committee on Taxation, the Senator from Louisiana (Mr. Long), called the Joint Committee on Taxation together to explore these charges, and we asked Commissioner Thrower to appear before our committee.

This meeting was at 3 o'clock on Tuesday of this week. Having read this statement I felt we should go beyond and see what the precedents were. So I directed this wire early on Monday morning, April 13, to the Honorable Ralph W. Thrower, the Commissioner of Internal Revenue, Department of the Treasury, in Washington:

In connection with your meeting tomorrow with the Joint Committee will you please have available information regarding the number of times tax returns were requested by the Executive Branch during each of the administrations since 1960. Signed, John J. Williams, Senator from Delaware.

Later I supplemented that and asked that he furnish the various regulations or rules which were discussed in the committee.

Commissioner Thrower has furnished and I received these yesterday—a series of the regulations which have governed the executive branch on the handling of these tax returns over the years beginning with the Kennedy administration.

I might say first, however, before going to that that I asked the staff of the joint committee, under the direction of Larry Woodworth, with whom all of us are acquainted, to prepare a memorandum as to the various branches of Government to whom tax returns are available and the manners in which the returns could be examined. I shall read his memorandum first. This is entitled, "Provisions of the Statute and Regulations Relative to Publicity of Income Tax Returns":

#### STATUTORY PROVISIONS ON PUBLICITY

The Code provides (section 6103(a)) that generally income tax returns are to be open to inspection only upon order of the President under rules and regulations prescribed by the Secretary of the Treasury of his delegate and approved by the President.

Four exceptions are made to the above limitation as to the publicity of returns. Income tax returns may be made available to:

(1) State income tax officials for the purpose of administering the State income tax law or to obtain information to be furnished local taxing authorities. The inspection may be made only upon request of the governor and only for State tax administration or, upon his request, can be made available to local tax administrators.

(2) In the case of corporate income tax returns, to shareholders having an interest of 1 percent or more.

(3) The Committee on Ways and Means, the Senate Finance Committee, the Joint Committee on Internal Revenue Taxation, and any select committee authorized to investigate tax returns, and

(4) The persons who filed the returns.

He then lists the various regulations regarding disclosure, and I ask unanimous consent that all of these regulations be printed in the Record at this point.

There being no objection, the regulations were ordered to be printed in the Record, as follows:

#### REGULATIONS

The existing regulations (Reg. § 301.6103 (a)-1(f) contain a general authority regarding inspection of returns by the executive departments. They specify that if the head of an executive department (other than the Treasury) or any other establishment of the Federal Government desires to inspect, or have an employee of his inspect, an income tax return he may do so if:

(1) It is in connection with some matter officially before him;

(2) there is a written application signed by the head of the executive department or other Government establishment desiring the inspection; and

(3) the application states the name of the person for whom the return was made, the kind of tax, the year, the reason why the inspection is desired, and the name and official designation of the person by whom the inspection is to be made.

#### PENALTIES

If the provisions of the regulations referred to above are not fully complied with, Section 7213 of the Internal Revenue Code relating to unauthorized disclosure of information applies. This provides for a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both, for improper release of information on tax returns. Also, if the offender is an officer or employee of the United States Government the section provides that he is to be dismissed from office or discharged from employment.

Mr. WILLIAMS of Delaware. As I stated, I had asked the Commissioner to go back and outline from the beginning just how this problem had been administered throughout the years by the various Presidents.

The first official record was a memorandum dated May 23, 1961, addressed to the Honorable Robert H. Knight, the General Counsel of the Treasury, and the subject is "inspection of Returns by Congressional Committees." This memorandum is signed by Mortimer Caplin, the Commissioner of Internal Revenue under the Kennedy administration and one of the men who signed the memorandum which I read earlier and upon which Mr. O'Brien based his statement of April 11.

I shall put the entire memorandum into the Record, but I shall move over to page 3 of it first. The first part of it relates to the manner in which congressional committees can obtain access to tax returns; but on page 3, under item c, Mr. Caplin outlined the rules under which a representative of the Kennedy administration could examine tax returns.

At this time I am quoting Mr. Caplin, who was then the Commissioner of Internal Revenue:

## C. INSPECTION OF RETURNS AND FILES BY MR. CARMINE BELLINO

On January 26 Mr. Bellino, Special Consultant to the President, called at my office and requested permission to inspect our files on \_\_\_\_\_ and others. Although we had no precedent to guide us, we decided that Mr. Bellino, in his capacity as a representative of the President, could inspect our files without a written request.

I underscore that point—"without a written request."

This reflects the view that Section 6103 of the Code specifically provides that returns shall be open to inspection upon order of the President, and since Mr. Bellino's official capacity constitutes him the representative of the President, the action taken is regarded as conforming to law. Based on this decision, we permitted Mr. Bellino to inspect the files relating to \_\_\_\_\_. Since that time we have also permitted him to inspect tax returns and related documents pertaining to other persons.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. WILLIAMS of Delaware. I yield.

Mr. CURTIS. Whom is the Senator quoting?

Mr. WILLIAMS of Delaware. I am quoting Mortimer Caplin, the Commissioner of Internal Revenue under the Kennedy administration and the same man who signed the letter to Larry O'Brien saying that it was a violation of the law for anybody in the executive branch to examine these returns except by written request.

It is fantastic how some of these bureaucrats can change positions after they leave office.

Yes, I am quoting from Mr. Caplin's own regulation which was issued under date of May 23, 1961. I would point out again the significant part of it, that on January 26 Mr. Bellino, as President Kennedy's special consultant, was given permission to examine any tax return without any written request.

This was 6 days after the administration took office and this ruling that they did not have to have any written request was made by Commissioner Caplin.

Mr. CURTIS. How many returns did he let Mr. Bellino see?

Mr. WILLIAMS of Delaware. No one knows. I asked for the number of tax returns which were requested by each administration. I was advised that there were seven requests under the Nixon administration signed by Mr. Mollenhoff involving nine tax returns. I will later outline the procedure followed by the Nixon administration, but they were all with a written request.

The Commissioner was asked how many returns had been inspected by the previous administration so that we could get a comparison, and they said that since there were no written requests apparently no records were kept or—if there were they cannot be found—they were unable to answer. However, the Commissioner did say that their records show that Mr. Bellino was in the Treasury Department examining the tax returns of various individuals and the language he used was "days on end." There must have been a very large number involved.

I will continue quoting from Mr. Caplin's May 23, 1961, ruling relating to this subject:

Further, in a letter dated January 26, and received January 30, Attorney General Robert F. Kennedy asked that Mr. Bellino be permitted to review all files, records, and documents requested by him in order to coordinate the investigation of certain individuals being conducted by the Internal Revenue Service, the Justice Department and other Government agencies. Permission was granted for Mr. Bellino to inspect such files in a letter dated February 1, 1961.

Additionally, Senator John L. McClellan, in a letter dated March 24, designated Mr. Bellino as a staff member of the Senate Permanent Subcommittee on Investigations, a subcommittee of the Committee on Government Operations, authorized to inspect returns pursuant to Executive Order 10916. As such, he is authorized to inspect those documents made available to the Subcommittee under requests made pursuant to this Order.

In the interest of providing a more detailed statement there is attached a Technical Memorandum prepared in the office of the Chief Counsel, which sets forth the historical background of (1) the requirement of a committee resolution and (2) the executive policy against supplying photocopies of returns to Congressional Committees. If you should desire additional information please let me know.

Signed, "Mortimer Caplin, Commissioner of Internal Revenue."

I move now to the next letter we have, showing how the Nixon administration handled it. I do not find any correspondence or ruling under the Johnson administration thus far which changed this practice. However, I find that when the Nixon administration took over, this loose practice of the Kennedy administration wherein tax returns were examined by White House staff was corrected. What procedure does this administration follow?

Mr. Thrower stated that when he assumed office in 1969 he was advised by the White House that Mr. Mollenhoff would be assigned to a position comparable to that which Mr. Bellino held under the Kennedy administration, and Commissioner Thrower felt that in the interest of orderly procedure the manner of allowing anyone from the executive branch to examine a tax return of any individual without having a written request or having it in writing for future reference was wrong. The Commissioner conferred with the White House, and this is a memorandum of procedure they worked out under the date of September 18, 1969.

This is the memorandum addressed to the Honorable Clark R. Mollenhoff, Deputy Counsel to the President, signed by the Commissioner of Internal Revenue, and the subject is inspection of tax returns and related files. These are the rules agreed upon at that time:

SEPTEMBER 18, 1969.

Memorandum to: The Honorable Clark R. Mollenhoff, Deputy Counsel to the President.

From: Commissioner of Internal Revenue.

Subject: Inspection of Tax Returns and Related Files.

Following through on our recent luncheon conversation, I have been thinking about ways that we can meet those situations in which you may want to inspect tax returns or other Internal Revenue Service files while at the same time carrying out our responsibilities under the disclosure statutes.

As you know, the basic rules governing disclosure of tax return information are set forth in 26 U.S.C. 6103 et seq., and the penalty provisions themselves are in 26 U.S.C. 7213 and 18 U.S. 1905.

I would suggest that every time you have occasion to inspect a tax return, application for exemption, or other Internal Revenue file, you send me a memorandum briefly setting forth the nature of the request. Naturally, we will infer in every case that the request is either at the direction of, or in the interest of, the President. I have taken the liberty of drafting a suggested format that you may wish to consider. If you want to look at the returns or files of more than one person or organization, you may list all of them in one memorandum.

After receiving your request, we will make arrangements for the files to be assembled in my immediate suite of offices here and we will notify you as soon as they are ready for inspection. Since most of the material in which you will be interested will be located in one of our regional or district offices, it will be necessary for us to obtain it and bring it to Washington. If, after inspection of the files, you want copies of any of the material inspected, we will be happy to make them for you.

I trust this arrangement will be satisfactory and look forward to a mutually rewarding relationship between our respective offices.

Signed, "Randolph W. Thrower."

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. GORE. The able Senator has referred to the conference with Commissioner Thrower and has now read a memorandum which was denied to the Joint Committee on Internal Revenue. I trust that it will be in order to make a few remarks about it.

Mr. WILLIAMS of Delaware. If the Senator will yield for a moment, the Senator is in error. This memorandum was not denied to the joint committee. They have this information, and the Senator is a member of that committee. It was also sent to me because I was the one who originally requested it. But I specifically requested that the full report be sent to the joint committee, and it was delivered to them first. They acknowledged receipt of it. The Senator is a member of the committee, and it is available; but I have a copy of it if he wishes to see it.

Mr. GORE. I appreciate the correction.

I requested this memorandum, and Mr. Thrower said he would have to obtain permission from the President to supply it.

I had not been advised that it had been supplied to the committee. I am glad that it has. I congratulate both the President and Commissioner Thrower upon supplying it.

Now, would the Senator from Delaware yield further?

Mr. WILLIAMS of Delaware. I yield.

Mr. GORE. To begin with, I am not acquainted with the details of what happened in previous administrations. It is only recently that I became a member of the Joint Committee on Internal Revenue. I am aware of what has happened here. Commissioner Thrower is a fine man and I do not wish in any way to be unkind to him.

However, in fairness to the Senate, I must state that I question the propriety and discretion, or lack thereof, of his action in supplying and in agreeing to supply Mr. Mollenhoff in an open ended arrangement with tax returns and copies of tax returns without a direct communication from the President of the United States, either verbally or in writing.

Commissioner Thrower testified that he had neither from the President. He relied entirely upon the representations of Mr. Clark Mollenhoff whose veracity I do not question.

Mr. WILLIAMS of Delaware. The point I want to get into the record straight is that Commissioner Thrower did not say—

Mr. GORE. I beg the Senator's pardon?

Mr. WILLIAMS of Delaware. I want to get the record straight. Again the Senator from Tennessee is in error. Commissioner Thrower said he did not rely entirely upon the statement of Mr. Mollenhoff. He said he was told by an official representative of the President that Clark Mollenhoff was being designated for this position and that the arrangement was to be made with Mr. Mollenhoff to work out procedures. He did not identify the other individual. I doubt if all of those men are in direct communication with the President any more than they were under preceding administrations.

I thought we should keep the record clear. I do not think there is any question in the minds of anyone but that Mr. Mollenhoff is the deputy counsel to the President, and he did hold the same official position that was held by individuals in preceding administrations who had access to the tax returns. We should give Commissioner Thrower the credit—I also give credit to the Nixon administration—for recognizing the danger in the loose manner in which it had been handled heretofore under the Democratic administrations where they were freely examined by White House employees without any written requests. Commissioner Thrower arranged that Mr. Mollenhoff would sign on the line the name of the taxpayer and at the same time be ready to justify why they needed that return. And I think they should. I am amazed that Commissioner Caplin had handled this same situation so loosely. If there is abuse I will join the Senator or anyone else in cleaning up abuses; but let us remember that the law provides that the President can get these returns, and the law provides, and it is intended to provide, that the Ways and Means Committee, the Finance Committee, and the Joint Committee on Taxation, operating independently of each other, any one of them can request and get a tax return. These committees have gotten them over the years with or without the consent of the President and even over the objections of the Commissioner when they needed to.

That is the law and has been over the years, and every President and every authorized committee has utilized this authority.

Surely the Senator from Tennessee, who is an able lawyer, was aware of that fact, and I cannot imagine just what Mr. Caplin was thinking about when last week he signed a letter denouncing his own decisions made as a Commissioner of Internal Revenue as having been illegal.

The President and the congressional committees must have this authority, but at the same time we must see that it is not abused.

I emphasize that we must have this authority. For example, I go back to my experience in the exposure of corruption in the Internal Revenue Service in the 1950 period. This corruption was at a high level. The then Senator from Virginia, Mr. Harry Byrd, and the Senator from North Carolina, Mr. Hoey, and myself, were appointed by Senator George of Georgia as a subcommittee to examine the allegation that certain high officials in the Revenue Service had abused their public offices. We needed certain tax returns to proceed with this investigation.

We had a situation where the former Commissioner of Internal Revenue went to the penitentiary. A Deputy Commissioner of Internal Revenue serving at the

time was indicted. A chief counsel of the Alcohol Tax Unit was also subsequently indicted.

Therefore, we could not expect cooperation from the executive branch or from the Internal Revenue. Our committee had to have that authority. I want to review this because this is very important background as to why we have to have this authority. The question may be asked, why did we not go to the Department of Justice? I did go to the Department of Justice during that period and tried to get their cooperation. I did not get it. Later I found out why.

One of the chief counsels, an Assistant Attorney General acting in the Tax Division of the Department of Justice, was likewise involved in this conspiracy and later went to jail.

Then one might ask, why did we not go to the President? I was unable to get a conference with President Truman. I tried hard at that time to do so. I wanted to report these allegations to the executive branch and get their assistance at the time I could not understand, why I was unable to get an appointment with President Truman.

I resented that very much at the time, although I understood later why I did not get that appointment.

I want to say here, first, lest there be any misunderstanding, that during all that investigation—and there was a lot of corruption exposed—never was there one single instance where one could point a finger at Harry Truman or any member of his family as having done anything dishonest. I want to emphasize that. But at the same time, there was a lot of corruption in his administration which needed cleaning up.

I found out later why I could not get an appointment with President Truman. The man I had to go through to get the appointment was Mr. Matt Connelly, the White House staff man, and President Truman's representative. I told him I wanted to talk about the alleged corrupt situation in the St. Louis revenue office and the Washington office. Later Connelly himself was indicted.

Thus we had the situation where the Department of Justice, the Internal Revenue, and the White House aids were all involved in a conspiracy to fix tax cases.

In a situation such as that, the only other recourse, in order to protect the taxpayers, was that at least we had someone or some committee in Congress which would act. The Finance Committee, with the assistance of the Senator from Virginia, Mr. Harry Byrd, as well as Senator Hoot from North Carolina, took an active interest in this matter, so that in spite of—I emphasize in spite of—getting no cooperation from the executive branch we were able to expose that corrupt regime. We were not getting much cooperation from the Treasury in the various 64 district offices, the reason being 12 of them were indicted, and eight of them went to the penitentiary at that time. Altogether, there were 100 some odd revenue employees who went to the penitentiary during that era.

Fortunately, we had the situation where the congressional committee could function. We did have access to these returns, with or without the permission of the executive branch.

Now I want to make a hypothetical reversal of that situation. Hypothetical and on the assumption that it will never happen. But it could happen.

For example, there are three congressional committees which can get tax returns without any consent from the Treasury Department. We can get them. The Senator knows that both the Finance Committee, of which he is a member, and the joint committee, of which he is also a member, can get the returns no matter what the President says and no matter what the Commissioner of Internal Revenue says because the law says that we can get them.

Suppose the time ever came—and God forbid that it would come—when we would have the top echelon of the Finance Committee and the top echelon of the Ways and Means Committee, which comprise the joint committee, all of them were crooked at one time. Then, without the President's authority where would there be the check to protect the American taxpayer?

I want to say that this is not any suggestion as to what can or will happen. I do not think it will happen. But I would not have thought it would happen simultaneously before where we would find the Bureau of Internal Revenue here in Washington, the top echelons of the Department of Justice, and someone connected with the White House, all engaged in the same type of conspiracy.

But suppose it did? Then the law provides that there is a check wherein the President of the United States could move in, and he would take action to protect the American people.

These safeguards were included as checks. At the same time I fully realize and I support the fear of Senators that there could be abuse in this matter. Certainly there can be abuse. I recognize that. I recognize the danger.

But if any man can show me where this privilege has been abused, I do not care whether it is in the executive branch or the legislative branch, I will lead the fight against it. But let us not defeat the practice here on a lot of political innuendoes and assumptions.

What I am pointing out is that over the years it has been historical that the President could under the law have access to tax returns, and that covers the agent he designates. We know that the President of the United States—Jack Kennedy, Lyndon Johnson, or Richard Nixon—are not personally going to examine the returns. He delegates that authority.

The senior Senator from Tennessee delegates responsibility in his office. He has to. The Senator from Tennessee is a member of the Joint Committee on Taxation. Our joint committee has the authority to obtain tax returns. We do get tax returns. We have had access to several tax returns in the last 12 months, and we have delegated our chief of staff, Larry Woodworth, and his assistants to examine them.

I do not think that I have seen one. I do not think the Senator from Tennessee has seen one. We have delegated authority to our staff and we did not do it in writing.

But that does not mean there has been abuse.

Mr. GORE, Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. GORE, Mr. President, I thank the Senator for his generous references. As the Senator knows, the Senator from Delaware and I vote together frequently on matters of tax preference. On matters like this we nearly always vote together.

When the committee met with respect to that matter, it was on the motion of the senior Senator from Delaware, seconded by the senior Senator from Tennessee, that the President supply to the committee a copy of the memorandum with respect to individual returns which Mr. Mollenhoff requested and also a request to the President to inform the committee whose tax returns had been supplied to Mr. Mollenhoff and why.

I will state this to make it perfectly plain, that this is no contention between the senior Senator from Delaware and the senior Senator from Tennessee. As I said earlier, I am not referring to the procedure of previous administrations.

Mr. WILLIAMS of Delaware, Mr. President, if the Senator will yield, I understand that we cannot be in the chamber all the time. I do not think he was here when I read the memorandum signed by Mortimer Caplin, Commissioner of Internal Revenue.

The memorandum is dated May 23, 1961. It describes the procedures under which he operated. I would like to read that again if I may.

Mr. GORE, I think I heard some of it.

Mr. WILLIAMS of Delaware. I want the Senator to hear all of it. That is what we are talking about, but first let me again correct the Senator from Tennessee. It was his motion that the committee ask for the names of the tax returns examined by Mr. Mollenhoff. My motion broadened this request to cover the names of all taxpayers whose returns were examined by all the administrations since 1960.

It was Mr. Caplin, the Commissioner of Internal Revenue under the Kennedy administration, who raised this question as to the procedure that the Nixon administration was following, and I pointed out that this administration is insisting upon signed letters before any returns are made available.

Now let us see how Mr. Caplin handled this when he was in office.

I again quote from Mr. Caplin's May 26, 1961, regulation:

#### C. INSPECTION OF RETURNS AND FILES BY MR. CARMINE BELLINO

On January 26 Mr. Bellino, Special Consultant to the President, called at my office and requested permission to inspect our files on \_\_\_\_\_ and others. Although we had no precedent to guide us, we decided that Mr. Bellino, in his capacity as a representative of the President, could inspect our files without a written request.

I emphasize that. There was no written request for these tax returns by Mr. Bellino or the President or anyone else, who was working at the White House at that time.

Commissioner Thrower said he could not tell us how many returns were examined by the Kennedy representative but that they did spend days and days examining them.

I read further from the Caplin 1961 regulation:

This reflects the view that Section 6103 of the Code specifically provides that returns shall be open to inspection upon order of the President, and since Mr. Bellino's official capacity constitutes him the representative of the President, the action taken is regarded as conforming to law. Based on this decision, we permitted Mr. Bellino to inspect the files relating to \_\_\_\_\_. Since that time we have also permitted him to inspect tax returns and related documents pertaining to other persons.

Mr. Caplin must have had his tongue in his cheek when he signed the O'Brien letter last week charging anyone who had allowed a White House representative to examine a tax return without a written request to be in violation of the criminal code.

Mr. President, I ask unanimous consent that the entire ruling of Mr. Caplin under date of May 23, 1961, be printed at this point in the Record.

There being no objection the memorandum was ordered to be printed in the RECORD, as follows:

MEMORANDUM FOR THE HONORABLE ROBERT H. KNIGHT, GENERAL COUNSEL OF THE  
TREASURY

SUBJECT: INSPECTION OF RETURNS BY CONGRESSIONAL COMMITTEES

In the Treasury staff meeting on March 31st it was pointed out that Mr. Carmine Bellino, Special Consultant to the President, had objected to certain regulations and Service policies affecting Congressional Committees authorized to inspect returns by Executive Orders. Specifically, he objected to (A) the regulations requiring the adoption of a resolution by a full Congressional Committee before its representatives may obtain permission to inspect tax returns and (B) the policy against allowing Congressional Committees to obtain photocopies of returns. It was suggested that we would submit our views concerning possible changes in present rules and procedures respecting these matters.

*A. Requirement of a resolution by a full congressional committee*

The requirement for a resolution adopted by the committee is contained in Treasury Decisions 6132 and 6133. The decision to require a full committee resolution for the inspection of returns was made by officials of the Treasury Department and approved by the President. Prior to the issuance of these Treasury Decisions in May 1955, a Congressional Committee authorized by Executive Order to inspect returns was permitted to do so solely upon the written request of the chairman of the committee or of a subcommittee thereof. No resolution of the committee was then required.

Mr. Bellino objected to the "committee resolution" requirement of the regulations because the task of assembling a quorum of a full committee for this purpose is very inconvenient, particularly where the membership is large. He stated that this is a burdensome requirement. For example, in April 1960, the Special Committee on the Federal Aid Highway Program, a Subcommittee of the House Committee on Public Works, requested permission to inspect certain returns. That request was denied because a resolution had not been passed by the full committee, consisting of thirty-two members, as required under the regulations.

Relief from the situation described may be provided by amendment of the regulations to permit, in the alternative, acceptance of a resolution adopted by a subcommittee, and signed by its chairman. This alternative should eliminate the problem but would retain a system of control needed by the Service.

*B. The policy against allowing congressional committees to photocopy or obtain photocopies of returns*

Under our present policy representatives of Congressional Committees are not supplied or permitted to make facsimile or photocopies of returns or related documents. However, they are permitted to inspect returns and certain related documents on premises of the National Office or a field office of the Service. Blank returns and other forms are furnished for transcribing data contained in the file opened for inspection. Access is granted not only to returns but also to administrative files, including revenue agent and special agent reports, with the exception of certain confidential documents.



This policy has been approved in the past by President Eisenhower, Secretary Humphrey, and Commissioners Andrews, Harrington, and Latham. The reasons for the policy apparently include the following:

1. It is essential to maintain the confidential nature of tax returns except insofar as the inspection of such returns is required in the public interest. Our tax collecting process depends upon the voluntary response of millions of taxpayers and they are entitled to rely on the statutory protection which safeguards the confidential nature of the information they furnish the Service. The use of photocopies exposes such confidential information to a greater extent than present methods of inspection. Improper or indiscreet disclosures could reduce public confidence in the Service and have adverse effects on the collection of revenue. While the use of photocopies might be advantageous to a committee, it would not appear to be essential to the discharge of the committee's functions.

2. The possible disclosure of tax returns or related data at committee sessions held as public hearings, and the accompanying risk of disclosures to unauthorized persons, including the press, have been matters of continuing concern to the Service.

3. When a Congressional Committee expires, its files may not be destroyed and the possibility of unauthorized disclosure may be increased.

However, our practice of not furnishing photocopies of returns to these committees is difficult to defend for the following reasons:

1. Section 6103(a) (3) of the Code provides that whenever a return is open to inspection a certified copy shall be furnished upon request.

2. Section 301.6103(a)-2 (T.D. 6546) of the related Regulations on Procedure and Administration provides that a copy of a return may be furnished any person who is entitled to inspect such return, upon request.

3. Our present policy provides distinctive treatment to such Congressional Committee requests since taxpayers, States, and Agencies of the Executive branch of the Federal Government may be furnished copies of returns upon receipt of a proper application.

Notwithstanding the above, we would like to retain the present policy since it provides a degree of protection against improper and indiscreet disclosures. However, if it is determined that this policy should be liberalized, we shall, of course, be guided accordingly. No amendment of regulations would be required to affect a change.

#### *C. Inspection of returns and files by Mr. Carmine Bellino*

On January 26 Mr. Bellino, Special Consultant to the President, called at my office and requested permission to inspect our files on ——— and others. Although we had no precedent to guide us, we decided that Mr. Bellino, in his capacity as a representative of the President, could inspect our files without a written request. This reflects the view that Section 6103 of the Code specifically provides that returns shall be open to inspection upon order of the President, and since Mr. Bellino's official capacity constitutes him the representative of the President, the action taken is regarded as conforming to law. Based on this decision, we permitted Mr. Bellino to inspect the files relating to ———. Since that time we have also permitted him to inspect tax returns and related documents pertaining to other persons.

Further, in a letter dated January 26, and received January 30, Attorney General Robert F. Kennedy asked that Mr. Bellino be permitted to review all files, records, and documents requested by him in order to coordinate the investigation of certain individuals being conducted by the Internal Revenue Service, the Justice Department and other Government agencies. Permission was granted for Mr. Bellino to inspect such files in a letter dated February 1, 1961.

Additionally, Senator John L. McClellan, in a letter dated March 24, designated Mr. Bellino as a staff member of the Senate Permanent Subcommittee on investigations, a subcommittee of the Committee on Government Operations, authorized to inspect returns pursuant to Executive Order 10916. As such, he is authorized to inspect those documents made available to the Subcommittee under requests made pursuant to this Order.

In the interest of providing a more detailed statement there is attached a Technical Memorandum prepared in the office of the Chief Counsel, which sets forth the historical background of (1) the requirement of a committee resolution, and (2) the executive policy against supplying photocopies of returns to Congressional Committees. If you should desire additional information please let me know.

MORTIMER CAPLIN, *Commissioner*.

Mr. GORE, Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware, I will in a minute. I am reviewing this record for the benefit of the Senator from Tennessee and not to point the finger at the Kennedy administration. I am not raising any question of impropriety with respect to the man who was in the White House. I do not think that anyone has raised a question that Mr. Mollenhoff has acted improperly with respect to handling these tax returns except by implication.

If any Senator knows of impropriety in this matter let us put our foot on it quick.

If there are any charges of improper use of these returns by Mr. Mollenhoff speak out, do not just cast doubts by these wife-beating questions as to what could happen.

Mr. GORE, Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware, I yield.

Mr. GORE, Neither two wrongs nor a multiplicity of wrongs constitute a right. I do not wish to allege any illegal act. I have not researched this law to that extent. But I say to the Senator in all seriousness that I think it is indiscreet, injudicious, and unwise, and I will go so far as to say improper for the Commissioner of Internal Revenue to make an open-ended arrangement with a political operative without direct orders or instructions from the President himself.

It throws uneasiness into the minds of millions of Americans concerning the confidential nature of the tax returns.

If nothing else comes from this, regardless of what may have occurred in past or present administrations, I will join with the senior Senator from Delaware in trying to formalize protection to preserve the privacy of the American citizen in his tax return.

This is not to question the right of a congressional committee with a need to know, with a need to have access to tax returns.

The Senator from Delaware wondered if I had ever seen one. I do not think I have seen but one tax return in the 12 years I have been on the Finance Committee. And this was requested by the committee emblematic of a question on legislation, not with respect to the wrongdoing of a taxpayer.

I think it ought to be formalized. I repeat, for a Commissioner of Internal Revenue to make an open-ended arrangement for an agent, whoever he may be, whatever his name is, whatever his role is, without an instruction from the head of the agency is of questionable legality.

I do not say it is illegal.

I had thought it was, but I am not prepared to say positively that it is. I have an adviser on my staff who says that it is. But I am not prepared to say so in view of what the Senator says.

Mr. WILLIAMS of Delaware, The Mollenhoff arrangement is not open ended. The Senator's criticism can more properly be directed toward the procedure under his own administration. Let us be fair with our criticism.

Mr. GORE, Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware, In just a moment. The only open ended arrangement that I know of around here in the matter of tax returns involves the committee of which he and I are members. We voted open ended authority to our staff. The Joint Committee staff can examine the returns. That is open ended authority. We do not put it in writing. Perhaps the Senator and I should look at our inner selves and see if we are operating properly.

Mr. GORE, Mr. President, I agree.

Mr. WILLIAMS of Delaware, I think we should face the facts.

The suggestion was made in Mr. O'Brien's statement that there was an indiscriminate examination of tax returns under the Nixon administration.

That is not true. The President has said that no such use has been made. I would certainly hope that this would be the basis of the examination of tax returns in all administrations; namely, in situations where questions are raised as to the propriety of conduct of some public official or someone in the administration.

Certainly, if he considers appointing a member to the courts he can, or at least he should, get that person's tax returns and have them examined before he sends the nomination to the Senate for confirmation. If, on the other hand, an allegation comes in that Joe Doaks, who is already a member of the executive branch or maybe even on the White House staff, is doing something improper the President should examine it, and if it is true, take the appropriate steps. If he needs the man's tax returns to get this information he should have the authority.

The Senator is well aware of the fact that the Commissioner said he knew of no instance where this authority has been abused. I am going to cite one case to point out why I think this authority is important.

Mr. GRIFFIN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. WILLIAMS of Delaware. Mr. President, I am going to cite one case to point out why I think this authority is important. I am not going to reveal the name; however, this is not a hypothetical case. In this instance the allegation was received from some fellow who had been before the courts, and he had received what he thought was an exceptionally heavy sentence. He was angry and his complaint was, "Why should this judge be so rough on me as a delinquent taxpayer"—not that he was innocent—"when he is more guilty than I am." Certainly that situation needs investigation. It was referred to proper channels at the White House. What did they find. They found that for 8 out of the 9 years prior to the time this man was appointed to the Federal bench he had not filed or paid his Federal income taxes. I repeat that. For 8 to 9 years prior to the time he was appointed as a judge and confirmed by the Senate he had not paid his Federal income taxes or filed any return. Just before being confirmed, apparently thinking he was going to get the appointment, he filed belated returns for all those years; and in a matter of months he was nominated and confirmed, and he is serving today.

The only way the President can now get rid of him would be to ask him for his resignation unless we in the Senate say that we will back him in removing this particular judge. I am sure the President will furnish the name of the man if the Senate wishes to act. Why should he not investigate such a charge?

If there are abuses of public trust that is what we are talking about. Certainly, allegations which of times cannot be supported do come in with respect to John Doe. When I was working with the Senator from Virginia allegations came in with respect to many John Does. We would get his tax returns and we would find nothing to substantiate those allegations. This is a very delicate matter and must be handled with discretion.

The very suggestion that the tax return of Joe Doe has been requested by a congressional committee or by the executive branch in itself constitutes a damaging indictment against the individual. It is unfair to publish these names unless guilt is established.

The Senator knows that he and I and every other member of the Joint Committee were assured by Commissioner Thrower that no request had been received from this administration since he has been in office involving an elected official, nor any on the basis that they were going to be examined to determine if Joe Doaks had paid the proper income tax. The amount of taxes to be paid is the job for the Commissioner of Internal Revenue and not the job of a congressional committee or the White House.

Mr. President, as a Senator I often have had people write to me that Joe Doaks is not paying his income tax. I have one standard form letter which states: If you have any information in that regard, you should write directly to the Director of Internal Revenue in your area or to the Commissioner and send him that information. To handle these otherwise would be wrong. I have directed my attention toward procedures.

I would be the first to rise in this Chamber and criticize the executive branch or any representative of it if they indiscriminately started to get tax returns of the average taxpayer. That same statement applies to congressional committees. That is the job of the Commissioner of Internal Revenue. If it is ever departed from under this administration, either at the congressional or at the legislative level or if it is shown to have been departed from by other administrations I shall be the first to rise in this Chamber.

But they have a responsibility when these allegations involve propriety to take some action. Why should they not look at them and find out if this charge against some official of Government is true? I would not want a judge on the Federal bench who might be judging me when he has not paid his income taxes for 8 or 9 years.

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I shall yield to the Senator in a moment.

If this screening process has been in practice at that time the nomination of that judge would not have been sent to the Senate for confirmation.

Of just what are Senators afraid?

There seems to be general agreement that no instances of impropriety of the handling of this authority has as yet been cited, yet there seems to be a fear.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. GRIFFIN. Is the junior Senator from Michigan correct that under existing law and the law that has been in effect the Governors of the several States which have income tax laws have the right to inspect Federal tax returns?

Mr. WILLIAMS of Delaware. The Governors, or they can delegate the authority.

Mr. GRIFFIN. That is my next question. Does it have to be the Governor or can he designate?

Mr. WILLIAMS of Delaware. He can and he does designate someone in his behalf in practically all situations. Some States that do not have income taxes may not use the authority. I understand 42 or 43 States do designate.

Mr. GRIFFIN. Would it not be a peculiar situation if the Governors of all States can designate someone to examine Federal tax returns when they have a question, and a question is raised about the President of the United States having designated a representative to do the same thing?

Mr. WILLIAMS of Delaware. Not only that, but it would be ridiculous to say the Governor has to do it personally or that the President has to do it personally. Certainly that is ridiculous.

I commend the Nixon administration for having laid down these sounder rules. Maybe they need to be tightened up more. Maybe Congress needs to examine our own procedures.

The Senator from Tennessee referred to the fact that the White House is a political organization. Congress is a political organization. I respect that fact. There is nothing wrong with that. The White House is part of the political arm of Government, but by the same token we in Congress on occasion have been known to be somewhat political. Who is to say a congressional committee is any less honorable or any less political than the man in the White House?

As I emphasized earlier, I am not questioning the manner in which the Kennedy administration operated, even though they had no written request; but at the same time let us not put a halo around Mortimer Caplins' head on the basis that his suggestions apply to everybody else but him. His later position is just a little bit ridiculous. I shall be looking forward to his comment on his own regulations of 1961.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I shall yield in a moment.

But if Mr. Caplin really thinks that he was in violation of the law to allow examination of these tax returns in 1961 without written orders and really wants to go to the Department of Justice to plead guilty maybe they would render assistance. I am reminding him of his own regulations in a friendly spirit.

Mr. HOLLAND and Mr. BAKER addressed the Chair.

Mr. WILLIAMS of Delaware. I yield to the Senator from Florida.

Mr. HOLLAND. Mr. President, perhaps I can throw a little light on the question raised by the Senator from Michigan.

At the time I served as Governor of the State of Florida, we had no State income tax and we do not now, but we did and do have an intangible property tax; that is, a tax on the holdings of intangible personal property, including the securities, of citizens. We have many citizens in our State who did own securities and filed an intangible property tax return.

One of the ways of checking against the accuracy of those returns was to see what they filed in their income tax returns with the Federal Government showing the income or dividends from their various corporate investments and notes or mortgages.

The program worked out was that the Governor would make the request, but that the income tax returns when sent down, as they were in many, many cases, would be referred to the comptroller of the State of Florida who was the tax enforcement officer of the State. The Governor at that time, for those 4 years, did not see any of those income tax returns. There was no occasion for him to see them. It was simply a cooperative effort to see that the laws were obeyed and taxes were paid. I think it was helpful to both governments. I would not want anything that comes out here to jeopardize that procedure in any way, because many States that have State income taxes and the several States that have intangible property taxes rely upon the procedure, which is handled not for political reasons whatever, but for practical enforcement of the tax laws of those States.

I hope that this explanation will be helpful to the Senator from Michigan.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I want to make sure that the junior Senator from Tennessee fully understands the thrust of the important remarks made by the Senator from Delaware. Do I understand correctly, according to the Senator's previous statement, that there have been seven instances of requests for tax returns by the executive department in this administration?

Mr. WILLIAMS of Delaware. Seven was the figure given to us the other day, but that embraced the tax returns for nine individuals.

Mr. BAKER. There were nine tax returns, but seven individual requests were involved?

Mr. WILLIAMS of Delaware. Yes.

Mr. BAKER. Do I understand correctly that the requests of the administration have been made in writing, in conformity with the requirements of the Internal Revenue Code?

Mr. WILLIAMS of Delaware. All requests under the Nixon administration have been in writing, in conformity with the regulations issued by Commissioner Thrower. The Internal Revenue Code states that tax returns will be issued upon the basis of regulations worked out by the Treasury Department and approved by the President, which means the administration can write them in any way he wishes. Mr. Thrower has written regulations and the White House has concurred that it would be more orderly procedure to make the requests in writing each time and make the man sign for them. I think that is good. The way Mr. Caplin did it under the Kennedy administration, no record was made and nobody was accountable, which I think was the wrong method.

It was a loose and dangerous practice, yet I hear very little mention of that loose practice under the Democratic regime.

Surely they are not advocating double standards.

Mr. BAKER. Mr. Caplin, during his tenure as Commissioner of Internal Revenue, promulgated, and the White House at that time approved, a regulation which did not require such a request to be in writing. Is that correct?

Mr. WILLIAMS of Delaware. That is right.

Mr. BAKER. And the White House can approve it?

Mr. WILLIAMS of Delaware. It must approve it.

Mr. BAKER. So no written requests were made, and there was no way to tell how many returns were examined, during the Johnson and Kennedy administrations?

Mr. WILLIAMS of Delaware. I do not remember any figures being given as to what happened under the Johnson administration, but we were told that under the Kennedy administration they spent "days on end" examining taxpayers' returns.

Mr. BAKER. If the Senator will yield for one further question, the letter which the Senator referred to in his remarks was written by Mr. O'Brien and whom else?

Mr. WILLIAMS of Delaware. I read the press release and the statement which Lawrence O'Brien released as Chairman of the Democratic National Committee. Mr. O'Brien was on the White House staff during the Kennedy administration.

Mr. BAKER. Was Mr. O'Brien, who made these charges, on the White House staff during the Kennedy administration?

Mr. WILLIAMS of Delaware. During the time he was on the staff, and later he was Postmaster General. I do not quite know in which capacity he was at which date.

Mr. BAKER. Who else was involved in the press release besides Mr. O'Brien?

Mr. WILLIAMS of Delaware. Mr. Mortimer Caplin.

Mr. BAKER. Mr. Mortimer Caplin. Was he Commissioner of Internal Revenue in the previous administration?

Mr. WILLIAMS of Delaware. Yes.

Mr. BAKER. Would Mr. Cohen have necessarily been involved in the promulgation of the regulations of the Internal Revenue Service with respect to the disclosure of personal returns?

Mr. WILLIAMS of Delaware. I would think so. There is no report of his changing the orders promulgated under the previous Kennedy administration.

Mr. BAKER. Who was the third signer?

Mr. WILLIAMS of Delaware. Mitchell Rogovin. He was also during that time in the Treasury Department and later moved to the Justice Department.

Mr. BAKER. Do we have any basis for knowing whether or not these three gentlemen were aware of these operations at the White House during the Kennedy administration—the examination of returns without written request? Has the Senator inquired into that, or does he know?

Mr. WILLIAMS of Delaware. I have. Certainly Mr. Caplin must know because he signed the order saying they could get them without written request. I think I know Mr. Caplin well enough to know that he would not sign a letter without knowing what was in it. One time as Commissioner he said that the White House could examine tax returns without written request—which I join the Senator from Tennessee in condemning as a rather loose arrangement for I think there should be some record. Later after Mr. Caplin left office he comes to the conclusion that such requests should be signed by the President.

Mr. BAKER. If the Senator will yield further to me, I would like to say I associate myself with the Senator from Delaware and my senior colleague in saying that this is an area where there is great potential for abuse. I personally will have to be educated as to why the executive department, or the President, for that matter, should have access to income tax returns, but I am willing to be educated in that respect. However, I will point out that I think the illustrations the Senator from Delaware has made point out the necessity for a close examination of these regulations and point out, as well, that it is a situation of long standing that we should look into.

Mr. WILLIAMS of Delaware. I wish to point out that it is essential that there be some check over both the executive branch and the legislative branch.

The Senate Finance Committee and the House Ways and Means Committee have always delegated this duty to our staffs. I will cite an example. When we had the tax reform bill before us last December, the suggestion was made that a number of individuals as a result of loopholes in the tax law were escaping the payment of income taxes entirely. Of course a loophole cannot be closed unless we know what it is. We have very high caliber staffs on the joint committee, a staff that we trust completely. The committee staff examined many returns to see how that avoidance of tax took place. In that manner we were able to close the tax loopholes. I know I would not, and I doubt if any member of the Senate Finance Committee or House Ways and Means Committee would, examine the returns. There is no reason why we should. We were getting hypothetical cases of how those tax loopholes occur. That is an example of why it is necessary for committees to have access to tax returns.

The Senator from Arkansas (Mr. McCLELLAN) has done a remarkable job with his investigation committee in exposing corruption. The McClellan committee needs to examine tax returns, and he can get them with the permission of the President. I defend his right to see those tax returns.

Sure there are abuses, but until abuses are shown, let us not stop that right.

Other agencies have the right to examine income tax returns.

Health, Education, and Welfare gets those returns. The question was raised why? A person can collect social security benefits, but if his earnings rise beyond a certain point his payments may be decreased or stopped. So officials in that department occasionally have to spotcheck returns.

Do not ask me why, but the Department of Agriculture was listed in 1968 as requesting permission to examine the tax returns of 709 taxpayers.

The Department of Commerce has examined a number of tax returns. We find listed the FDIC. Of Course the Department of Justice naturally would: it would be expected. The Federal Home Loan Bank Board. The Securities and Exchange Commission. The Small Business Administration. The Comptroller of the currency. The Federal Communications Commission. The Department of State. The Renegotiation Board. The Department of Health, Education, and Welfare. The Department of Labor. The Tennessee Valley Authority examined tax returns. The Department of the Army. The Veterans' Administration.

These are some of the agencies that examined top returns in 1968.

Several Senators addressed the Chair.

Mr. WILLIAMS of Delaware. I would like to finish, if I may.

The Civil Service Commission. The Department of the Air Force requested and examined tax returns. The Postmaster General wanted to examine the returns of four taxpayers.

The Secretary of Transportation. The Bureau of Accounts. The National Selective Service Appeal Board, and the Post Office Department itself. All those are agencies that in 1968 examined tax returns.

Maybe they are not properly circumscribed. If they are not we as much as

anyone else should be to blame. But altogether, these agencies examined in 1968 a total of—

Mr. TYDINGS. Mr. President, will the Senator yield? The Senator has been holding the floor for some time.

Mr. WILLIAMS of Delaware. Yes, I shall yield. They examined in 1968 the returns of 3,393 taxpayers and this figure does not include those requested by the White House. We were told that 1969 would probably show a comparable figure.

Perhaps these agencies need these returns for various reasons. Certainly U.S. attorneys and the various agencies have to have them.

I yield to the Senator from Maryland.

Mr. TYDINGS. Has Mr. Mollenhoff asked for the tax returns for Governor Wallace or any member of his family?

Mr. WILLIAMS of Delaware. I do not know.

Mr. TYDINGS. Has Mr. Mollenhoff asked for the tax return of any Member of this body?

Mr. WILLIAMS of Delaware. I do not know what returns Mr. Mollenhoff asked for. The Commissioner told the joint committee that the returns of no elected official had been requested.

Mr. TYDINGS. Has he asked for the return of any U.S. district judge, or any judge of a circuit court of appeals?

Mr. WILLIAMS of Delaware. As I say, I do not know. The Senator can request the names of all of them.

Mr. TYDINGS. Agreed.

Mr. WILLIAMS of Delaware. Commissioner Thrower told our committee—and that is all I know about it—that under the Nixon administration there were seven requests from Mr. Mollenhoff involving nine taxpayers, I believe. The Senator from Tennessee is nodding his head. That it is nine.

Mr. TYDINGS. How about that letter? Shall we sign it together?

Mr. WILLIAMS of Delaware. Just a moment. A total of nine. And he said also that he felt he could not properly tell us the names, but he did say they did not involve any elected public officials. That means that Senators would not be covered. That was the statement we—

Mr. TYDINGS. How about any sitting judge or justice?

Mr. WILLIAMS of Delaware. I do not know.

Mr. TYDINGS. Would the Senator from Delaware agree that whether it occurred in the Kennedy administration or the Nixon administration, or any other administration, to let a political operative in the White House, with no background in investigative work such as having served in any investigative agency, have carte blanche access to the income tax returns of anyone in the United States, would be a very dangerous thing, and should be corrected by legislation?

Mr. WILLIAMS of Delaware. That is a leading question. The Senator was not here when I read the procedure under previous administrations so I would like to point out to him that the loose practice has been corrected. I agree with him completely that the manner in which it was handled before was very dangerous. Since the Senator was not here, I shall read Mr. Caplin's method while he was Commissioner, because I do not think it can be pointed out too often, the loose manner in which it was handled under the Kennedy administration.

Mr. TYDINGS. I heard the Senator read about the Kennedy administration.

Mr. WILLIAMS of Delaware. I read also the way it has been improved under the Nixon administration.

If there are those who do not like the appointees of the President or do not like the President himself, that is one thing. But if this is a case where they do not trust Mr. Mollenhoff they ought to say so and state why.

Mr. TYDINGS. It does not make any difference who it is.

Mr. WILLIAMS of Delaware. Does the Senator know of any abuse in the manner in which the White House is now handling this problem?

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. SAXBE). The Senator from Delaware has the floor.

Mr. TYDINGS. When we write to Mr. Mollenhoff, the Senator from Delaware and I together, and get the names of those persons whose returns he requested, we can determine whether or not there are any political implications.

But I recall very well, when I was U.S. attorney, nobody saw income tax returns unless the Attorney General of the United States requested it for a specific investigation. No U.S. attorney or anyone else. The Internal Revenue Service handled them. Whenever income tax returns were used in the Government, they went through channels that were completely circumspect and outside the possibility of any type of political implications.

Now, if President Kennedy or any other President has a system whereby someone, not through the ordinary course of governmental operations, could, carte blanche, examine your income tax return or mine, I think that is a very, very dangerous thing. I think the apprehension of it can be most upsetting. We in the United States pay our taxes voluntarily. We are one of the few nations in the world where the taxpayers voluntarily pay their taxes, and we do it because we have confidence that the returns are confidentially handled.

To have it revealed here that the contrary has been done, I think, is very disconcerting, regardless of the administration, or whether the man's name is Mollenhoff, Jones, Smith, or anything else and ought to be released only under specified statutory provisions, completely outside political channels.

Mr. WILLIAMS of Delaware. I would agree with the Senator and am glad that the Nixon administration has corrected the loose practice previously followed. But when he says "outside political channels" would the Senator say the Senate Finance Committee, which has access to tax returns under the law, the Ways and Means Committee, which has access to tax returns under the law, the Joint Committee on Taxation, which has access to tax returns under the law, the Committee on the Judiciary, on which the Senator has served—every committee of Congress—

Mr. TYDINGS. Right.

Mr. WILLIAMS of Delaware. Just a minute. Would the Senator say we have to be political in our motivation, or are we to—

Mr. TYDINGS. Absolutely not, because we do it under prescribed rules. In the Committee on the Judiciary, when we have nominations, no one sees that income tax return unless the individual member of the committee goes to the chairman, and he sits down alone, with no staff member. That is specifically within the lines of official work.

But to give to someone is not in any way working for the Department of Justice, whose chief public mission is political in nature, the right to examine income tax returns, whether it is a Republican or Democratic administration, or any kind, I think, is a very, very upsetting thought.

Mr. WILLIAMS of Delaware. I am glad that the Senator is upset, because I, too, was upset at what was going on under the previous administration. But I want to say—

Mr. TYDINGS. It is a dangerous thing.

Mr. WILLIAMS of Delaware. But the point is, the law gives to the President the right—they have always had that right; that is the law—the President has it as President, and the U.S. attorneys could get these tax returns. They do get them. They have to get them.

Mr. TYDINGS. To try a case the Internal Revenue Service has already made.

Mr. WILLIAMS of Delaware. Surely they do.

Mr. TYDINGS. But they do not instigate it. The case is brought to them by an Internal Revenue Service intelligence agent, who received the case from a revenue agent, who acquired it through an audit. That comes in the normal course to the Department of Justice. The Attorney General has the right to ask the Internal Revenue Service for an income tax return, but that is a part of the day to day operations of the Department of Justice. That has nothing to do with someone who has a political background, who has responsibilities in political campaigns, having the power to go and take anybody's tax return and look it over.

Mr. WILLIAMS of Delaware. Mr. President, let us get it straight. There is much being said here hypothetically.

I said earlier that President Nixon had laid down rules that these tax returns were not to be available under any circumstances to Mr. Mollenhoff or anyone merely on the basis of examining whether Joe, Tom, Dick or Harry was paying his proper income taxes, but only in cases where there may be abuse of the public trust.

I am just trying to review the record and outline the law, and I do not want to get into a political discussion of whether Members on the other side of the aisle wanted Mr. Nixon as President, or whether they would have had more confidence in a man Mr. Humphrey would have appointed. That is not the point. The President, not the Senator from Maryland, appoints his Chief Counsel. Every President has appointed someone to represent him. If some Senator feels it is being abused he should spell out the charge. But I will say, as I pointed out before that the Nixon administration has laid down rules whereby this is



done in writing, and that is more than was done before. So let us at least give them that much credit.

If there is still abuse, that is another matter. The Commissioner made it clear to our committee. He said that of those that were requested not one of them involved an elected public official. That is all I know.

Mr. ALLOTT. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. In just a moment. There have been seven requests for nine returns, each of them putting in writing the name of the man.

There is this danger about releasing the names, and I understand it. I point out one case they cited and said we could use it, hoping we could do something about it: An allegation came into the executive branch that a member of the Federal bench—the complaint came from someone who thought his sentence, perhaps, was too harsh—but the report came in from this individual that this judge himself was just as bad or worse than the man convicted.

They called for the man's tax returns. They found that in 8 out of 9 of the preceding years before he was nominated and confirmed by the Senate he had not filed a return nor had he paid his income tax. He did file a belated return just before his name was sent to the Senate, and he was confirmed by the Senate, and he is a member of the Court today. The President in power at the time should have checked that or the committee should have known it. I hope we can get that man to resign. If not I hope there is enough interest in the Senate that we can take him off the Bench. He should not be the judge of his fellow man when he himself would not pay his own income taxes.

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. The White House has tried to assure that this power is exercised with discretion. No business operations are threatened with tax investigations, nor has the FBI been sent around at late hours in the night.

I promised to yield to the Senator from Colorado.

Mr. ALLOTT. I thank the Senator for yielding.

First of all, the Senator has also referred to this: The man who made this press release, Lawrence O'Brien, occupied a very, very political position with President Kennedy during the time that these orders were made or access was made to the IRS files by Mr. Bellino. Is that not true?

Mr. WILLIAMS of Delaware. That is true. The charges were made out of the office of the Democratic National Committee by Lawrence F. O'Brien, as chairman of that committee.

Mr. ALLOTT. I think it would be interesting to have Mr. O'Brien answer the question—perhaps the press would be kind enough to put this question to him—as to whether or not he examined any income tax returns during the time he was with the President in the White House.

Mr. WILLIAMS of Delaware. I would welcome his answer personally. I would doubt very much that he did. I would be surprised. I said earlier that I do not question that Mr. Bellino may have kept this confidential. I do not know of any evidence otherwise. But the fact is that under that Kennedy administration he examined tax returns without written request—if we want to use the word that the Senator from Maryland used—wholesale, by going in and getting any return with no records made. I think that was a very loose operation. I think the man's name should be on record so there would be responsibility if we found they were abusing this and turning it into political persecution—and it could be; let us face it. I recognize that danger. Then we could go back and see who the President's representative was who called for the returns, and why.

Mr. TYDINGS. How would we know?

Mr. ALLOTT. Mr. President, the Senator yielded to me.

Mr. WILLIAMS of Delaware. I do not know how we would know, any more than the Senator or I know, as a member of the committee. The only way I know in which I could satisfy some people would be to say that only the members of the Democratic Party could do this. I am getting tired of this political bickering. The Senator asks how we would know that some man down there is not going to abuse it. We do not know. We do not know that the President of the United States is not going to do something wrong. We do not know that John Williams or that Joe Tydings is not going to abuse our public trust. But let us not start asking questions and question the integrity of a man until we know what we are talking about.

Mr. TYDINGS. We have guidelines.

Mr. ALLOTT. Mr. President, will the Senator yield to me?

Mr. WILLIAMS of Delaware. I have not heard of any case that has been abused. I yield to the Senator from Colorado.

Mr. ALLOTT. The Senator from Maryland has had an opportunity to intervene in this matter, and I would like an opportunity, also.

I, together with Senator Magnuson, who is chairman of the Independent Offices Committee, got a real shock in this area in the hearings of 1965, and I want to refer to specific pages in those hearings, from 1080 through 1105, in which will be found a complete discussion of the access of the Federal Trade Commission—of all things—to the IRS files.

They first denied that they had access to them, and I read Paul Rand Dixon's answer:

What we got off the income tax was names, sir; that's all we get.

Before we got through examining him, we found that they were maintaining a staff of three or four people all the time at the IRS—all the time. This was in 1965. Because of the investigation and the questioning we subjected them to—both Senator Magnuson and I—that practice, according to the subsequent statement of Mr. Dixon, next year was not resumed. It was stopped.

Is this not the fact: The very man who set up the regulations—which were no regulations at all, in effect—for Mr. Bellino in 1961 is the man who today signs a letter, which the Senator had placed in the Record or has read into the Record, which says that this is an illegal act?

Mr. WILLIAMS of Delaware. That is correct.

Mr. ALLOTT. Mr. Mortimer Caplin, to be specific.

Mr. WILLIAMS of Delaware. Mr. Caplin now says that what he did while he was Commissioner was illegal, and he said the requests should be in writing. They are in writing now.

I think this is an area in which we should be ever cautious. I would have appreciated it, and I think I would have equally as much respect for Mr. Caplin's position, had he written the committee rather than writing the Democratic National Committee. I do not know what he figured the Democratic National Committee could do about it, except politics. Mr. O'Brien said:

If this action is not taken voluntarily, we are prepared to initiate legal action that will end this practice.

He was condemning a loose practice that his own administration initiated but which has been corrected long ago by the Nixon administration. But I guess they will not initiate prosecution retroactively on themselves.

I think this matter should be put into proper perspective, and called what it is: namely, gutter politics. They have tried to give the impression throughout the country that these tax returns under the Nixon administration have been used indiscriminately. They have not, and that is the point. And the Commissioner has said that there has been much less use in this administration than heretofore. There have been seven requests with nine returns.

Here is another letter which I will put in the Record, dated August 10, 1964. This is addressed to the Honorable Bertrand H. Harding, the Acting Commissioner of Internal Revenue, in Washington:

DEPARTMENT OF JUSTICE,  
Washington, August 10, 1964.

HON. BERTRAND M. HARDING,  
Acting Commission of Internal Revenue,  
Washington, D.C.

DEAR MR. HARDING: In connection with an official investigation, I would appreciate receiving uncertified photostatic copies of the income tax returns for the years 1958 through 1963 for the enclosed list of taxpayers.

It is also requested that these returns be forwarded to Mr. Walter J. Sheridan, 450 Milner Building, 210 South Lamar Street, Jackson, Mississippi. In the events these returns are not located, it is requested that Mr. Sheridan be notified at the above address.

Your cooperation in this matter is greatly appreciated.

Sincerely,

HERBERT J. MILLER, Jr.,  
Assistant Attorney General.

I do not know who Mr. Sheridan is. I would hope he was the U.S. attorney.

Let us not try to make a mountain out of a molehill. I have yet to hear one man anywhere speak of a specific example of abuse of handling these returns under the Nixon administration.

I recall that years ago a Member of the Senate was censured for trying to condemn his fellow man by innuendo, without specific charges. If anyone has any question to raise concerning abuse, name the case, and I will help to have it

checked. If he is right I do not care who it is; I will help to correct the abuse.

Let us not say, "Did he get the return of Mr. X," and throw out a lot of names. I think it is unfair to any man. Merely asking such a question indicates suspicion on the part of the man who does so. It is unfair.

Mr. ALLOTT. Does not the question alone, "Did you get the return of George Wallace?"—

Mr. WILLIAMS of Delaware. That alone constitutes a semicharge, and I am surprised at the man who did it.

Mr. ALLOTT. Does that not constitute a sort of cloud itself?

Mr. WILLIAMS of Delaware. It is, and it is wrong.

I would say that if any official in the executive branch of the Government—I do not care if it is Clark Mollenhoff or my own brother—is getting tax returns of the average citizen, as a member of the executive branch, not a member of the Bureau of Internal Revenue, for the sole purpose of seeing whether or not that citizen is paying enough taxes or as a political threat, that is wrong. If a man has done something wrong as a Government official or as a prospective Government official, when there is such an allegation involving a Government transaction, it is their business to check. I only wish such a check had been in force under some preceding administration, because then we would not have a Federal judge sitting today, passing judgment on American taxpayers, who in private life did not pay his income taxes.

Mr. SPARKMAN. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. SPARKMAN. I want to seek some information because we hope to finish this bill today and we expect a rollcall. I hope that Senators still in the Chamber—

Mr. WILLIAMS of Delaware. I hope so, too. I told the Senator that I would not be but a few minutes, but I do not want to shut off this colloquy—

Mr. SPARKMAN. I realize that, but a good many Senators have asked me when they could get away because we expect a rollcall vote some time today—

Mr. WILLIAMS of Delaware. Well, we are dealing with a very important subject here, and I think they are all anxious to stay around and get a better understanding of the law.

Mr. SCOTT. Mr. President, if the Senator from Delaware will yield, could I ask whether he himself intends to ask for a rollcall on the bill?

Mr. WILLIAMS of Delaware. I understand it will be requested; yes.

Mr. HANSEN. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. HANSEN. Mr. President, I thank the distinguished Senator from Delaware.

I should like to compliment him on the job he has done in looking into a situation that, up to now, or rather, before he spoke, might very well have been presumed, in the minds of a great many people, merely to reflect upon the political activities of the present administration.

I join the other Senators who already have expressed their strong convictions that this system is not a reprehensible one, that it is defensible, that it has resulted in real benefit accruing to the people of this country.

Let me say, Mr. President, that I do not think the average taxpayer is too much disturbed about having his tax returns examined. Obviously, most of us would hope that those near neighbors of ours would not have the pleasure of trying to make comparisons between what we may do and they may do; but so far as the average taxpayer in this country is concerned, I do not think that he fears an examination of his return by the President, or by anyone else, because I happen to believe that most of the people in this country are honest.

I do not think it is fair at all to allege that we will destroy the whole system, if we let the cat out of the bag to the effect that former Presidents and former staff members of Presidents have examined tax returns. I do not think that any President, insofar as I know of—not a single one—has exercised that authority capriciously.

I would ask my distinguished colleagues on the other side, and on this side of the aisle as well, whether they are concerned, if it disturbs them that 106 or 108—whatever the number was—persons working for the Internal Revenue Service who have been convicted, a number of whom are now serving their sentences, does that disturb them? It surely does not disturb me and I do not think it disturbs the average taxpayer at all, that in this country of ours the President of the United States and certain committees of Congress are going to be looking into the returns filed by all taxpayers. It does not make one bit of difference if

they happen to be, at a precise point in time, the Collector of Internal Revenue for the United States, that they, too, are not going to be exempted from the scrutiny that should be assured all the people will be exercised by this Government, by the checks to which the Senator from Delaware has already referred, which constitutes the best assurance I know of that we will be treating all the people in this country alike. I do not know of a single taxpayer in this country—are there 70 million—35 million?

Mr. WILLIAMS of Delaware. Eighty million.

Mr. HANSEN. Eighty million taxpayers. I should think that when 106 people, who have served the Government of the United States in the collection of taxes, have been convicted of violations, that this was the best way, the best possible way I know of, to convince the more than 210 million, or however many millions of people there are in this country today, that this system is good. We are calling upon the people of this country voluntarily to tell the Government what taxes they owe.

I, too, resent the questions that were put to my distinguished friend from Delaware by saying, "Has this person's tax return been examined?"

We could very easily turn around and ask our friends on the other side of the aisle, "Has that person's taxes been examined?"

I do not know.

All I can say is that Mr. Mollenhoff is answerable to the President of the United States. The President of the United States was elected by a vote of the people of this country. I recognize his right, and I defend him in his right, to name whoever he wishes to serve as his representative. I leave it up to the good judgment of the people of this country. When they no longer want to extend the mandate they granted in 1968, let that judgment be made by the people of this country.

If Mr. Mollenhoff, or whoever may serve under any President, those who served under President Truman, those who served under President Roosevelt—I do not know under whom Mr. Noonan served, the former Commissioner of Internal Revenue who was convicted and who served time; but I am certain it was not the intent of the President of the United States, whoever he was, under whom Mr. Noonan served, to have that kind of business going on. I do not think it is up to us to say that in our judgment, Mr. Mollenhoff is a political operator.

There are many people serving in high positions in Government today. The important thing is that they have the confidence of the President of the United States and that their actions be judged in the light of the good sense of the people of this country; and if they do not like the way that business is being handled, there is provided the opportunity every 4 years to change that around.

I have every confidence Mr. Mollenhoff will act in a most responsible fashion to serve the Presidency of the United States. If it just happens that some read into his actions a political motivation, let it be noted that he has asked for the tax returns of only nine individuals and that he made seven requests to get the nine returns. Compare that, if you will, with what was done under President Kennedy. But I am not objecting to that. I think it is good. I am proud that Senator McClellan has done the great job he has in this country. I am just delighted. I think that all the people of this country are far better off, because he had the right, as Chairman of the Committee on Government Operations, to make the investigation he has. Had he denied that right, this country would be far worse off than is now the fact.

I do not think there is any validity to the charge. It would occur to me that if I wanted to be political, that what may have started out as an allegation that seemed to have some political connotation, in the light of the discussions which have been made by the distinguished senior Senator from Delaware, has now been turned right around. I do not blame those who complained. It is like the man who caught a wildcat and would like someone to help him turn it loose.

Mr. WILLIAMS of Delaware. Mr. President, I shall yield the floor in just a moment, but I want to make just one point here, in case what has been said may be interpreted as a criticism of Mr. Bellino who was the man examining the returns under the preceding administration without written requests. I knew Mr. Bellino when he was serving as the counsel of the Committee on Government Operations. I knew him personally. I had tremendous respect for Mr. Bellino. I am confident, based on my knowledge of him and on the Senator from Nebraska who was also on the committee and who knows Mr. Bellino, that he did not turn this into a political persecution operation. I have that much confidence in him. I want the Record to show that. I did not raise the questions, but I do think it would have been better to have had his requests in writing.

President Kennedy had the right to outline, as the law says, the regulation under which it operates, and as the regulations were outlined there would be no written request. I wish there had been. I am glad that the present administration is using written requests only; but, nevertheless, I do not attribute to Mr. Bellino any suggestion that he was doing anything in his capacity other than that which he should have done as a representative of the President.

At the same time I would hope that those who frankly admit they have not been able to raise any charge of improper handling of these returns as far as Mr. Mollenhoff is concerned would extend to him the same degree of respect. There is no evidence that I can find which would show that Mr. Mollenhoff has not acted with discretion. What are they scared about?

If there is something wrong and Senators want to change the law let us get to it. We have the same objective no matter which side of the aisle we are on. We are not going to accomplish anything on a partisan basis. We would not render any service to our country.

In the heat of such a political discussion we might leave the impression that the integrity and the secrecy of tax returns are not being properly respected. I think that they are. There is no evidence to the contrary. And let us not make any charge by innuendo.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I shall yield to the Senator from Nebraska and shall then yield the floor.

Mr. CURTIS. Mr. President, I thank the Senator. I am sure I speak for many in the Chamber in expressing gratitude to the Senator from Delaware for setting the record straight.

It is very clear that the actions of Commissioner Thrower, the Office of the President, the President himself, and Mr. Mollenhoff were in accord with both the law and the regulations.

So far as Clark Mollenhoff is concerned, he does not need any defense. Clark Mollenhoff is a man of the highest integrity and character. He is a lawyer and is well trained. There is not a man in Washington that has researched as many investigations as Clark Mollenhoff has.

Such low tactics are below the dignity of the Senate.

People who might wonder about Clark Mollenhoff are not those that are afraid that he would be a party to something wrong, but they are rather afraid that he might be pursuing the public interest.

I again commend the distinguished Senator from Delaware for clearing up an item that might be disturbing the American people.

I am just politically minded enough to want to say a kind word about Lawrence O'Brien. The chairman of a political part has a very tough job. He has to build the business day after day. And some days business is poor.

He has to support candidates that are strong, and he has to support candidates that are weak.

The chairman has got to stand there and push ahead all the time.

I hope that those who are his superiors will not be too rough on him for his error in this matter.

Mr. Caplin and Mr. Cohen particularly should have caught the error, because Mr. Caplin is on record in writing for a position which is apparently totally contrary to what he advised Mr. O'Brien.

I hope that those who are Mr. O'Brien's superiors will be forgiving because the burden on the chairman of either party is very heavy. He has to try to support candidates and some of them are not very good candidates.

Mr. WILLIAMS of Delaware. Mr. President, I thank the Senator. I concur in that statement. I thought the record should be set straight because these questions have been raised.

I have had many Senators who are not on the committee ask whether there has been a violation of the law. And I thought the record should be set straight.

I want to say that there is no evidence to substantiate such a political attack as that made by Mr. O'Brien. No suggestion has been made in any committee meeting that I have attended indicating that anything improper has been done in the handling of these returns by the executive branch under the preceding administration, under this administration, or by any congressional committee.

When the question was raised as to HEW, someone asked, "Why do they need tax returns?" We found that they need them to check the information on social security benefits.

There may be a reason for all of this. If abuse is shown anywhere we want to handle it, but let us handle it in the best interest of the revenue service, not as a political issue.

I thought that we should get the record straight from the beginning so that we would know that it is not something unusual when tax returns can be examined by a representative of the President. It has always been done. It should be done. I would not have much respect for any man in the White House who did not discharge his responsibility when something was called to his attention.

I have the utmost respect for both Mr. Bellino and Mr. Mollenhoff, but there can always be something to go wrong. We should be on guard for that.

I think that the chairman of our Finance Committee, who is also the chairman of the Joint Economic Committee, should be commended for calling the committee together promptly in order to determine the basis of Mr. O'Brien's charges.

If someone raises a question of abuse tomorrow I would say that we should examine it. It should be examined. If there is any basis for it we should clear it up and correct it. If the manner in which the returns are being handled by the agencies or by the various divisions of the executive branch of the Government or by congressional committees is improper let us face it.

I know the chairman will bear me out. We were all surprised when we found the vast number of executive departments that had had access to the returns over the past several years.

Mr. LONG. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. LONG. Mr. President, I am happy that the Senator brought this matter up. It is a matter that should be considered by the Senate. It should be discussed. About a week ago, Chairman Mills, after having heard the story that Mr. Mollenhoff had access to income tax returns, suggested to me that we should meet. I agreed and we would have met perhaps a week sooner had we been able to get all the Members together quicker.

Certain things came to my attention which I thought we should act on. For one thing, it is important for all to understand that no citizen has any right to object to the President or to the Government agency, such as the Justice Department, taking a look at his tax return on a completely responsible basis. For one to look at a man's tax returns for an improper purpose, of course, is something that everyone has the right to object to.

I believe we would all agree that the Bellino precedent is really not very good. It is not good to send someone over without a written authorization from the President and without any written authorization at all to look at anyone's tax returns. Obviously, that is not a good practice.

My impression is that this precedent did not continue under the Johnson administration.

Mr. WILLIAMS of Delaware. The Senator is correct.

Mr. LONG. Mr. President, it would be fair to say that President Johnson did not follow this practice at any time. If he had, we would find out, I would think.

Mr. WILLIAMS of Delaware. Mr. President, I made that statement earlier.

Mr. LONG. Mr. President, in this particular instance, I would suggest that we should pass a law to say on just what terms and conditions a person designated by the President is entitled to see someone's tax returns.

As far as I am concerned, the President, himself, is entitled to see everyone's tax returns. But I do not think that when that authority is delegated, it ought to be spelled out in writing. The President ought to sign a document saying, "I designate Mr. Mollenhoff, or whoever it may be, to be my man to look at certain tax returns for these specified purposes."

Then we would know who the man is and why he wanted to see the returns.

I hope that the Senator will agree that when one goes to look at a tax return, he ought to make such a request in writing and state why he asked to see the return, and whose return it was, so that if he is doing this thing in an irresponsible way, this fact could be expected to come back and haunt him, in the manner in which this Bellino matter came back to haunt him.

The Senator knows as well as I do that what we have here might not be as much a matter of serious concern as the fact that Governors have this tax information available to them, perhaps altogether too loosely.

It seems to me the procedure we spell out for the President should apply to Governors as well. If someone wants to see a tax return, there should be a record that he wanted to see it, why he wanted to see it.

As the Senator from Delaware knows, members of the Committee on Finance and the Joint Committee have the right to see tax returns. I do not recall of any case where we asked to see the actual name of the individual involved or the company. We normally say we would like to know if company A did this, and if they did, then how much was involved and the other pertinent facts.

Mr. WILLIAMS of Delaware. The Senator is correct. In addition, if a return did have to be examined we had Mr. Woodworth or his staff do it as the case of Mr. John Doe. It would be highly improper for the Committee on Finance or any other committee of Congress or anyone in the executive branch, wherever it may be, to start examining tax returns on an indiscriminate basis. That is not what we are here for. We have the Internal Revenue Service to do that. In the Committee on Finance we were examining returns to see if there were legal loopholes in the law that needed to be corrected from a legislative standpoint only. The various agencies, should look at them only in the administration of their duties and not on the basis of anything else, and as I understand it that is what is being done.

If there is evidence of violations by any agency of government I would be the first to rise to oppose it because I would not want that to happen. We do have to protect the American taxpayer. We collect this money on a voluntary basis, but at the same time we have to convince the American people that we are on guard trying to protect their interests and at the same time trying to assure that there is not only secrecy in the tax returns but also integrity on the part of the officials administering the agency.

I think something good may come of this discussion here today because, as the Senator pointed out, there can be problems particularly as relating to the States and other agencies. Maybe we in Congress need tighter rules; maybe the White House needs tighter rules. But let us do it working together with one thought in mind, and that is to promote a better government. I have no evidence that there was improper use made of tax returns under preceding administrations or this administration, none whatever.

I have expressed my high regard for Mr. Bellino. I have the same high regard for President Nixon and his representative Mr. Mollenhoff, and I hope others share that high regard. I am going to respect all of them until somebody comes in and says that a certain particular case was handled wrong. When it comes to that I will examine the matter on its merits, and whoever is responsible will be held accountable. Meanwhile let us not lose respect for our fellow man nor try to discredit him for partisan political gain.

I yield the floor.

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#### THE EMERGENCY HOME FINANCING ACT OF 1970

The Senate resumed the consideration of the bill (S. 3685) to increase the availability of mortgage credit for the financing of urgently needed housing, and for other purposes.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. SPARKMAN. Mr. President, as far as I know there will be only three amendments. I do not believe there is any controversy in connection with any of them.

I would like to propound a unanimous-consent request that there be a time limitation of 10 minutes on each amendment, the time to be controlled by the person offering the amendment and the distinguished Senator from Texas.

The PRESIDING OFFICER. Is there objection?

Mr. GORE. Mr. President, reserving the right to object, I have been on my feet for 1 hour to make a brief statement. Unless I can be recognized, I shall object to everything.

Mr. SPARKMAN. Let us proceed, then. The preceding matter has consumed about 2 hours and 40 minutes since the interruption was had. I was given to understand at the time that the interruption would be for 15 minutes.

I am going to be here tomorrow, and if Senators want a session tomorrow, I am willing to quit now and come in tomorrow.

Mr. GORE. Mr. President, will the Senator yield?

Mr. TOWER. We could finish the pending bill in 20 minutes.

Mr. SPARKMAN. We could finish it in 20 minutes. We expect a rollcall vote.

Mr. GORE. I shall not take more than 10 minutes; otherwise, I object.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that 10 minutes be granted to the distinguished Senator from Tennessee, to be followed by the time limitation requested by the Senator from Alabama.

Mr. SPARKMAN. I shall not object, with the understanding that if anyone else requests time, I will object. I have commitments myself.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PRACTICE BY EXECUTIVE BRANCH OF EXAMINING INDIVIDUAL TAX RETURNS

Mr. GORE. Mr. President, this is a very disturbing matter that has been discussed here. I wish the record to show that I have not referred to any action of President Nixon in this regard.

Mr. MANSFIELD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. GORE. A number of statements have been made with respect to Presidential action with regard to the issuance of regulations.

The committee session which I attended did not have any evidence of any action on the part of President Nixon at all and I do not wish to allege any. I have not made reference to any.

I did make a statement that the procedure appeared to be loose, indiscreet, inadvisable, and I will say again improper, and as I said it was open ended.

Here is what we have: A memorandum of conversations between Commissioner Thrower and Mr. Clark R. Mollenhoff. The memorandum states:

Following through on our recent luncheon conversation—

I then come to the sentence:

I would suggest that every time you have occasion to inspect a tax return, application for exemption, or other Internal Revenue file, you send me a memorandum briefly setting forth the nature of the request. Naturally—

Listen to how tight this is.

Naturally, we will infer in every case that the request is either at the direction of, or in the interest of, the President.

The Commissioner testified he had had no instructions from the President orally or in writing, and yet this memorandum stated he naturally assumes that every request will be at the direction of or in the interest of the President. What does "in the interest of" mean?

I shall read another sentence:

After receiving your request, we will make arrangements for the files to be assembled in my immediate suite of offices here and we will notify you as soon as they are ready for inspection.

Real accommodating, is it not? Real accommodating.

If, after inspection of the files, you want copies of any of the material inspected, we will be happy to make them for you.

Mr. President, I say this is an indiscreet way to treat a taxpayer's tax return. Who whispered to the distinguished senior Senator from Delaware that a tax return of a judge had been pulled and examined? Nobody whispered that to me. Has anybody whispered that to the chairman of the committee? Who whispers this about? How does it come that political figures are alleged to be involved, that hints are being whispered about them? This is disturbing.

I do not say the President had anything to do with it. I do not know. I would be inclined to think he did not. But by what right, by what possession, does the Commissioner of Internal Revenue say that he will assume that every request Mr. Clark Mollenhoff makes is at the direction of the President or in the interest of the President?

If nothing else comes of this, I hope we will arrive at a formalized procedure, because this is loose. I think it is irresponsible and improper. I cannot say it is illegal. I had previously thought it was. I am not prepared now to say so. But I want to make it so it is illegal.

This is not to question the right of the President to have access to a tax return. I do not question it. I think he should. I think if congressional committees have a need to know, it should be made available to them. But this does not go to a political operative going on a fishing expedition to find out what he can about tax returns.

Somebody might write a letter about another judge. Nothing has been alleged here with respect to the instance cited. Who has whispered the facts or the



name? I do not know the name or the facts, but nobody has alleged that the judge did anything wrong. Nobody has alleged any criminal acts. I just do not know the circumstances. I will not presume what the circumstances are. But if the contents of one taxpayer's files can be whispered about, the contents of every taxpayer's files can be whispered about.

We need to formalize a procedure to preserve the privacy and the confidential nature of the tax returns of every taxpayer.

Mr. ALLEN. Mr. President, much attention has been directed today in the Senate to the controversy between the Democratic Party chairman, Lawrence F. O'Brien, and Republican chairman, Rogers Morton, concerning the wisdom of a discretionary power in Mr. Clark Mollenhoff to investigate income tax returns of private citizens.

I have no evidence to indicate and no reason to believe that Mr. Mollenhoff has abused his discretionary power. On the other hand, I fully understand the concern of some that such a power could be abused if it were used strictly for political purposes.

It occurs to me that our concern about possible misuse of power to investigate tax returns might be more profitably directed toward the Internal Revenue Service. The possibilities of abuse at that source would seem limitless since IRS has access to all income tax returns.

For example, on April 13, 1970, a newspaper account indicated that a special task force of Internal Revenue agents had been assembled in Alabama and are asking questions about eight named political figures in Alabama, one being the brother of a candidate for statewide office and five of whom are currently campaigning for office in the State Democratic Party primary scheduled for May 5, 1970. These newspaper accounts cite "confidential field reports" and allegations made in a confidential report of the Internal Revenue Service's Audit Division as source of authority.

Mr. President, no one questions the right of Internal Revenue agents to investigate income tax returns if motivated by the duty to protect the public interest by fair and impartial enforcement of the law. On the other hand, if the investigation is motivated by political considerations—that is another story.

It stands to reason that any publicized investigation by the Internal Revenue Service tends to create a suspicion, to say the least, and suggests the possibility of a violation of law.

The newspaper accounts state that the investigation is still in its preliminary stages and that no charges have been brought against anyone. Nevertheless, the publicity concerning the investigation was allegedly based on information obtained from the Internal Revenue Service. The election is less than 3 weeks hence. The candidates named in the publicity are placed in a grossly unfair position of being compelled to refute the implications of the announced investigation.

The timing of this investigation has created questions in the minds of many Alabamians. They want to know if the investigation is politically motivated and who is responsible for the timing and for the release of supposedly confidential information if any such information was, in fact, released. It seems to me that these are valid questions.

Mr. President, I campaigned for the office of U.S. Senator from Alabama emphasizing among other things my sincere conviction that the Federal Establishment should not undertake to interfere in State political races. I hold firmly to that conviction.

I hope sincerely that we have not witnessed in Alabama a pattern for future political activities of this or any other administration.

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#### THE EMERGENCY HOME FINANCING ACT OF 1970

The Senate resumed the consideration of the bill (S. 3685) to increase the availability of mortgage credit for the financing of urgently needed housing, and for other purposes.

Mr. Tower obtained the floor.

Mr. MONDALE. Mr. President, will the Senator yield?

Mr. TOWER. I yield.

Mr. MONDALE. Mr. President, I return to the amendment which I had earlier called up.

The PRESIDING OFFICER. The clerk will please state the amendment of the Senator from Minnesota.

Mr. MONDALE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with, and that it be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert a new section as follows:

"TREASURY BORROWING AUTHORITY FOR NEW COMMUNITIES PROGRAM

"SEC. 606. Section 407 (a) of the Housing and Urban Development Act of 1968 is amended by adding at the end thereof the following: "The Secretary may issue obligations to the Secretary of the Treasury in an amount outstanding at any one time sufficient to enable the Secretary to carry out his functions with respect to the guarantees authorized by this title. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Secretary issued under this subsection, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under such Act are extended to include purchases of the Secretary's obligations hereunder.' "

PROCEDURES TO BE FORMALIZED

Mr. ALEXANDER. And it remains the position of the Internal Revenue Service that there is this right under present law to tax information. What we have done is implement procedures, soon to be formalized, under which requests would be made in writing and a full record would be kept of such requests.

Mr. Whitaker, would you care to amplify?

Mr. WHITAKER. I would like to make certain that the record is clear. Mr. Chairman, that one of the problems we as lawyers see with the present statute, is that the framework of the rules and regulations which govern the conditions under which tax-return information is to be kept private or is to be made public is determined almost entirely by Presidentially approved regulations. It is my own view that this is a matter which really ought to be focused on by the Congress, and while we agree wholeheartedly with the framework under which we operate, it seems to me that the framework ought to be changed into a statutory framework rather than one which can vary with the views of those in our position and in the White House and in Justice, all of whom have an input in these regulations.

It is important for this reason that I certainly share with the Commissioner the view that we badly need clarification of the law and we think we need some change in the law which would in part put the regulatory framework into the statute.

Senator KENNEDY. It is not there at the present time?

Mr. ALEXANDER. No, sir.

Senator KENNEDY. And, as I understand from your responses, you are going to soon formalize your procedures, is that right? They have not been formalized at the present time?

Mr. ALEXANDER. That is correct. Mr. Willsey?

Mr. WILLSEY. That is absolutely correct.

Senator KENNEDY. When will they be formalized? And, when they are formalized, will you make those procedures available to the public?

Mr. WILLSEY. We have a correlative problem, Mr. Chairman, in that

legislation is being actively considered here on the Hill right now, and while we have general operating understandings in the Commissioner's office and in the office of the different assistant commissioners, it probably would not be worthwhile to go through the complete formalization of procedures, other than those that apply internally, in view of the possibility of changes in the statute in the relative near future which we hope are going to be forthcoming.

Mr. ALEXANDER. The procedures we are talking about formalizing, Mr. Chairman, are procedures dealing specifically with White House access to tax information. We do, Mr. Chairman, have——

Senator KENNEDY. Do I understand then that if the Congress does not act in the next 6 or 8 months, we might have to wait before you formalize procedures and regulations that will govern the contacts between the White House and the IRS?

Mr. ALEXANDER. No, we are not waiting, Mr. Chairman. We have moved informally and we are moving formally in-house. All this is in-house.

Senator KENNEDY. Will the public know what procedures are being followed dealing with this?

#### PROCEDURES TO BE RELEASED TO PUBLIC

Mr. ALEXANDER. Mr. Chairman, the public will know because we will release these procedures to the public along with substantially all of the rest of our manual.

Senator KENNEDY. When will that take place?

Mr. ALEXANDER. As soon as possible. I would like to say that we would have this in place by the end of next week but I found in my brief career in Government, Mr. Chairman, that things sometimes move much slower than I would like.

Senator KENNEDY. Can we anticipate it within, say, the next couple of weeks?

Mr. ALEXANDER. Oh, yes. I see no reason why that cannot be done.

Senator KENNEDY. If I understand you, then, you are going to formalize procedures which would regulate, or at least which the IRS under your leadership would follow, that would relate to contacts being made between the White House and the IRS? Do I understand that?

Mr. ALEXANDER. That understanding is correct, Mr. Chairman.

#### CHANGES IN THE STATUTE REQUIRED

Senator KENNEDY. Then, second, as I understand it, it is the considered judgment of you and your colleagues, that there ought to be changes made in the statute, and that these procedures ought to be formalized in statutory form. Am I correct on that?

Mr. ALEXANDER. That is correct, Mr. Chairman. The way to solve the problem for the long run is not to depend upon procedures established by a particular Commissioner but instead establish sound and restricted procedures under the law itself.

Senator KENNEDY. That seems to me to be wise, because otherwise you could very well have shifting procedures under different commissioners, and it would be extremely confusing to the public.

Let me ask you this.

Have you made any proposed suggestions now for such changes in the statute, either to the Congress or to the White House, or to the Treasury Department?

#### TREASURY AND OMB INVOLVED IN CODE AMENDMENT

Mr. ALEXANDER. Mr. Chairman, I have testified generally about the scope of the problem, the nature of the problem, and the solution to the problem before several committees of Congress beginning last August.

We are working with the Treasury Department now in drafting an amendment, a substitute to section 6103 of the Code which is not ready for submission as it has not been fully approved by the Treasury Department, has not yet been submitted to the Office of Management and Budget.

The administration, of course, speaks through the Office of Management and Budget on matters such as this, but basically the objective that we see and that they see and that the Vice President's Committee sees, is the same.

Senator KENNEDY. It always amazes me that OMB decides Government policy on which you obviously have the greatest degree of competence.

Mr. ALEXANDER. Part of it does affect our relations with other departments and agencies. We have under present law an obligation to supply tax-return data and information to the Bureau of the Census, for example, for their purposes and the Bureau of the Census is a good agency that knows and fully recognizes its duties to keep confidential information private. We have other responsibilities toward other Government departments and agencies, and because this involves more than just IRS, the Office of Management and Budget is properly involved.

Senator KENNEDY. Well, would I assume it is going to take you more than a week to clear it through OMB and the Treasury Department?

Mr. ALEXANDER. I think that assumption is a safe one, Mr. Chairman.

Senator KENNEDY. How long? Can you give us any idea what your recent contacts have been with OMB and Treasury Department and when they indicated they might get at this?

Mr. ALEXANDER. Mr. Whitaker and I have been discussing this issue with top Treasury officials. As I said, the objective we seek is a common objective. We may have minor differences in the details of the legislation. How long it might take in OMB is something that is not only beyond my control but beyond my knowledge.

Senator KENNEDY. Can you tell us how long it has been over there now?

Mr. ALEXANDER. We have been working hard on this particular problem, Mr. Chairman, since before May when I testified before the Ways and Means Committee on this subject, on May 6.

Mr. WHITAKER. The statutory provision has not left main Treasury yet.

Senator KENNEDY. Has not left Treasury?

Mr. WHITAKER. No.

Senator KENNEDY. And it still has to go to OMB?

Mr. WHITAKER. Yes, sir. I anticipate the transmittal by Treasury to OMB will be made either the latter part of this week or early next week. It does have to have the Secretary's approval. But I think all differences of opinion within the Treasury Department have been resolved.

[The legislative proposal referred to appears in the appendix at p. 189.]

Mr. ALEXANDER. Mr. Chairman, it is my understanding that the Ways and Means Committee is considering this issue in its current deliberations on tax reform.

Senator KENNEDY. I have some knowledge of the schedule of the Ways and Means Committee, because I am interested in two proposals that are waiting there. I am hopeful they get both out, but I do not think that we ought to just wait to see whether they are going to. Both of those bills are going to have rough going, but I certainly would not feel it was justifiable for the agency to delay in promulgating and establishing regulations, waiting for either the tax reform or some other measure to pass.

I would urge that you not do so and I understand from your responses that you are not doing so.

Let me ask you further with regard to the proposed procedures which are followed—are they over in Treasury, too?

#### IRS MAKES OWN PROCEDURES

Mr. ALEXANDER. No, the procedures that Mr. Willsey and I discussed with you earlier, Mr. Chairman, are Internal Revenue procedures.

Senator KENNEDY. So they do not have to go to the White House or the Treasury?

Mr. ALEXANDER. No, we are installing those procedures. Now, I report to the Deputy Secretary of the Treasury and I consult with Treasury on important matters affecting Internal Revenue procedures and policies, but the Internal Revenue Service makes its own procedures.

[The following notice concerning disclosure of tax returns to the White House was submitted by Commissioner Alexander for the record:]

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
*August 9, 1974.*

#### INFORMATION NOTICE

#### DISCLOSURE OF TAX RETURNS AND TAX INFORMATION TO MEMBERS OF THE WHITE HOUSE STAFF

This is to inform Service employees of the procedures which should be followed with respect to requests for tax returns and tax information from members of the White House Office. The White House Office comprises the officers and employees of the staff of the President required in the performance of the detailed activities incident to his immediate office. Any officer or employee of the Internal Revenue Service who receives a request for tax returns or tax information from a member of the White House Office shall promptly communicate the contents of the request to the Commissioner through the head of the office in which he serves. The Commissioner will evaluate the request and will ask the Assistant Commissioner (Compliance) to prepare whatever reports may be necessary in the same manner as provided by sections (18)(30)(1)(b) and (3) of IRM 1272, Disclosure of Official Information Handbook. Only the Commissioner, or, in the absence of the Commissioner, the Deputy Commissioner, will make the report,

the tax returns, or tax information available to the members of the White House Office. These procedures will be made a part of the Disclosure of Official Information Handbook, IRM 1272. The institution of these procedures is intended to include the Special Tax Check Report Program established by Chapter (19)00 of IRM 1272, Disclosure of Official Information Handbook. Pending revision and republication of Chapter (19)00 of IRM 1272, the information submitted pursuant to a report under this Program should be limited to whether an individual has filed income tax returns with respect to the immediately preceding three years, has failed to pay any tax within 10 days after notice and demand, has been under any criminal tax investigation and the result of such investigation, or has been assessed a civil penalty for fraud or negligence.

DONALD C. ALEXANDER, *Commissioner*.

Senator KENNEDY. Let me ask you now about contacts with Congress and contacts with the States or other agencies? Are you in the process of promulgating regulations regarding these contacts?

#### CONGRESSIONAL CONTACTS RE-EXAMINED

Mr. ALEXANDER. We are doing something about it on several fronts. First, considering congressional contacts in the light of this basic right of privacy, to what extent has a taxpayer waived his right to privacy when he contacts his Congressman with respect to a tax matter? What if there is only a phone call? We have reexamined what we have been doing and what we should be doing and we have instituted new procedures which are an effort to strike a balance between protecting the basic right of privacy and being responsive to the inquiry that the taxpayer made to the Congressman which the Congressman relayed to us. That is part of the problem.

Another part of the problem is making and keeping a record.

Senator KENNEDY. I do not know whether we are as much interested in the particular details of the contact, but just that these contacts are being made. Do you think that the fact that the contact has been made should be generally available to the public or not? What is your feeling about that? Do your people feel the need to be protected or not? From your experience would public knowledge be useful?

Mr. ALEXANDER. I think the existence and the maintenance of the record may be sufficient.

Mr. Whitaker, have you considered this aspect of this issue?

Mr. WHITAKER. This is a matter of individual judgment, obviously, Mr. Chairman. It seems to me as a lawyer, based on my prior practice and in my present job, that it is desirable for members of the public to have the right to have one of their Congressmen make an inquiry on their behalf to ascertain the status of something. I think the Commissioner and I will both say that generally there is no need for a Member of Congress to get into the merits of Cases and I think that that is well recognized by the Members of the Congress. So I would not think myself that any statutory procedures are necessary. We are concerned, as the Commissioner indicated, to make certain that we do not violate the taxpayer's right of privacy in attempting to reply to a congressional inquiry. It is sometimes a very difficult matter to handle because we have to rely on judgment in most cases as to the extent to which the taxpayer himself or herself has made a disclosure to the Congressman or the Congressman's office and limit our response within that framework.

Senator KENNEDY. What are the procedures now? Do you keep a list of contacts that are made?

Mr. ALEXANDER. Yes, most of these contacts to the IRS national office, particularly, are by letter, a referral letter or buckslip from the particular Congressman or Senator, usually to my office, transmitting the taxpayer's letter. We keep a record of the receipt of the particular letter or buckslip from the particular Congressman, and the date, of course. I acknowledge these letters, and then either my office, or the office of the Assistant Commissioner involved, or the Chief Counsel, responds to the congressional inquiry and, of course, copies of our responses as well as copies of the material transmitted to us are retained. That is our procedure at present, and at the moment we do not have in prospect, to my knowledge, any substantial modifications of these procedures other than what Mr. Whitaker and I have described to you and which touches on the other part of the issue, the extent to which the taxpayer has waived his or her right of privacy.

#### NO CURRENT WHITE HOUSE ATTEMPTS TO INFLUENCE RULINGS

Senator KENNEDY. What about either the attempts by the White House or Congress to influence rulings? That does not quite present the right of privacy issue.

Mr. ALEXANDER. I can speak only of the present, Mr. Chairman. Since I have become Commissioner, and I know of no such attempts to influence rulings of the IRS. In the past there was considerable concern about this problem as well as the problem of influencing audits, and you can be sure that the IRS is well aware of its responsibilities not to give in to any improper influences in this area as well, whatever the source of those influences.

I would like to add, Mr. Chairman, a little to a point that I discussed briefly earlier. At IRS we certainly recognize a completely legitimate interest on the part of the citizens to petition Congressmen, Senators, and the President for relief from what they may consider unfair treatment by an agency. We recognize the responsibility of the agency to respond to correspondence from the Hill in this respect. We also recognize our responsibility not to be subjected to or give in to improper influences.

#### NOTIFICATION TO CITIZENS

Senator KENNEDY. Do you think that if a particular citizen's tax form is requested by the White House that citizen should be notified?

Mr. ALEXANDER. Under the procedures followed in the past, Mr. Chairman, there is no requirement of notification, there is no authorization for notification. This is a matter which might well be considered in connection with a revision of section 6103 of the Code, the provision which we pointed out earlier that says tax returns are open on order of the President.

Senator KENNEDY. What is your own feeling in terms of protecting the right to privacy? You indicated the importance that it has in the decisions of the agency itself—should not a citizen be made aware if his tax form is being pulled or turned over to a State or turned over to an agency? Should he not be just made aware of that fact?

Mr. ALEXANDER. I would question that, Mr. Chairman, as a solution to the problem. Government agencies having a legitimate access to

tax returns and tax-return information, such as the Department of Justice, and such as the States, are frequently engaged in investigations and these investigations are proper and appropriate and carried out pursuant to the responsibility imposed on the particular investigating agency. I think it would impede the investigatory process to give this particular advice, although I think that this is a matter that might well be considered to some extent, at least, in the statutory revision that Mr. Whitaker has referred to.

#### COMMISSIONER WILL NOT SUBMIT TO POLITICAL PRESSURE

Senator KENNEDY. I was pleased to hear you say that you resist all attempts to involve the IRS in the politics of particular decisions. Now, when Mr. John Dean gave former Commissioner Walters a list of enemies to be audited by the IRS, Mr. Walters indicated that he took that list, put it in a safe, and took no action with respect to it despite a continued pressure from the White House.

What would you do if you received names of people to be audited?

Mr. ALEXANDER. First, I would not audit them and, second, I would report the matter to the Secretary of the Treasury, and third, depending on the circumstances, I would consider reporting the matter to the Department of Justice.

#### TAX RETURN DISCLOSURE BY IRS EMPLOYEE

Senator KENNEDY. There was also indication that certain IRS employees are alleged to have supplied the White House with information about tax returns and audit activities at the request of the White House.

Do you consider that to be a proper or improper action?

Mr. ALEXANDER. We are aware of these allegations. These matters are now under investigation, Mr. Chairman, and I hope that this investigation will be concluded soon. The Joint Committee on Internal Revenue Taxation completed a portion of its investigation when it issued its report last December 20th. It has not completed its entire investigation. These other matters are under investigation by the Special Prosecutor.

Senator KENNEDY. Let us not look to the past, then, let us look to the present, to the future.

Are you satisfied that you have in place procedures so that this type of situation could not take place under the present practices of the IRS?

Mr. ALEXANDER. With an organization as large as Internal Revenue and with as many people as Internal Revenue has, I could not give a flat assurance that, whatever our procedures and whatever our policies, someone in this organization of over 76,000 people might not violate those procedures and policies. I can give you flat assurance that the procedures and the policies are that information will not be improperly transmitted, that information will be, if requested, provided by my office. We are proceeding, Mr. Chairman, with the tax-check procedures that have been in effect for many years with respect to prospective governmental employees where only a very small amount of information is given to the White House and to other appointive officials with respect to the prospective appointee. Here again, Mr.



Chairman, the chief counsel and I have this procedure under reconsideration and we are considering measures to tighten it up.

Senator KENNEDY. So, you feel that any such procedure or the fact any employee were to make information available to the White House would be improper?

Mr. ALEXANDER. Apart from the tax-check information, Mr. Chairman—

Senator KENNEDY. Without your knowing about it, would it be proper or improper, outside of the tax-check procedure which you have outlined?

Mr. ALEXANDER. I think it would be improper but improper in that it would violate our Internal Revenue policies and procedures which I have installed, that any information, apart from the limited tax-check area that we have discussed, goes through my office and no other office on its way further.

Senator KENNEDY. And if you found someone had done that, would you discipline them?

Mr. ALEXANDER. I certainly would.

Mr. WHITAKER. I would just like to add, if I may, Mr. Chairman, that one of the items included in the legislative proposal that we are working on, which we mentioned a while back, is the clarification of those penalties for improper disclosure, and this is another aspect which we feel very strongly needs Congressional attention.

#### JUSTIFICATION FOR DISCLOSURE TO WHITE HOUSE

Senator KENNEDY. Let me ask you: Why should the White House get tax returns in any event? Is it not the Justice Department that investigates any alleged improprieties or difficulties, or participants in clearing nominees. What possible justification would there be for a President to have a tax return?

Mr. ALEXANDER. Two types of justification have been mentioned for tax-return information and the former sensitive case procedure. One is to avoid embarrassment that would result if the White House failed to have information which if it had that information would have resulted in a different relationship with the particular taxpayer. The other is that the President is the chief executive officer charged with the execution of all laws, and that in this capacity he and the members of the White House office are entitled to what information they need to fulfill their top executive role.

I report to the Deputy Secretary and the Secretary of the Treasury but they in turn, of course, are responsible to the White House.

Senator KENNEDY. Well, they are responsible to the White House but I suppose that besides investigations—there was a letter sent in early 1961 that was signed, to the then Secretary of the Treasury, Mr. Dillon, signed by President Kennedy, that says:

"Recently I discussed with you the necessity for making Internal Revenue Service record checks on prospective Presidential appointees prior to their nomination to the Senate. At your request Commissioner Caplan submitted a proposed plan for making the record checks which has been approved by my staff. It is my desire that tax record checks be made as a supplement to the character investigation conducted by the FBI. Accordingly, the Commissioner of Internal Revenue should be directed to accept requests from the FBI for tax record checks on designated individuals and furnish the required information to them for transmittal to my staff with their related reports."

But outside of those two instances, what other possible function would there be for Presidential access—can you think of any?

Mr. ALEXANDER. The tax-check matter to which you referred has been in effect for many years and it is well understood and seems appropriate.

The avoidance of embarrassment matter, I will pass over rather quickly and get to the third point again, the very nature of the office of the chief executive is that the office is entitled to tax return information as well as information from any other department or investigatory agency to perform its function. That is a matter, Mr. Chairman, on which I cannot speak because I cannot evaluate the needs and duties of that office.

#### TAX CHECK STATISTICS

Senator KENNEDY. What is the volume of tax checks that we are talking about?

Mr. ALEXANDER. It is very substantial. I would have to supply that for the record unless Mr. Gibb is aware of the volume, say, within the last 6 months on which we have reported to the Joint Committee.

Mr. GIBB. We will submit it for the record.

Mr. ALEXANDER. We would like to get it for the record.

Senator KENNEDY. Could you give me a general ball-park figure, say, in over the last 12 or 6 months? Are we talking about 10 a month, are we talking about 100 a month, are you talking about 1,000 a year or talking about 100 a year?

Mr. GIBB. Perhaps a year.

Senator KENNEDY. You can obviously correct the record. But I am just interested for my understanding of this.

Mr. ALEXANDER. We will submit that for the record and I did want to bring out a point that I think is important here. We report at 6-month intervals to the Joint Committee on Internal Revenue Taxation, having legislative oversight over our agency, about who has inquired and why, when, and how many times for tax-return information. We think this report is a sound idea and we hope that the Joint Committee will continue it.

I might say I know of no signs whatever that they are thinking of discontinuing it.

[The following data were submitted for the record:]

#### White House tax check requests

Total received for period January–June 1973	536
Total received for period July–December 1973	545
Total received for period January–June 1974	557

#### TAX CHECK PROCEDURES ARE PUBLIC

Senator KENNEDY. Is the procedure by which you make available these tax checks a public procedure? Who knows about it?

Mr. GIBB. It has been disclosed. It is in a public document.

Mr. ALEXANDER. It is public. If it were not public, it would be very soon. I am very glad to find out it is already because it certainly should be.

Senator KENNEDY. Would you make that a part of the note you give us on the other?

Mr. GIBB, Yes.

[The following regulations from the Internal Revenue Manual were subsequently submitted for the record:]

(19)00 SPECIAL TAX CHECK REPORT

(19)10 GENERAL

(1) The National Office will request tax check reports on prospective Presidential appointees, on nominees for Presidential "E" Awards established by Executive Order 10978, and on certain other persons. Generally, these tax records checks are made to supplement investigations concerning the character, loyalty, or suitability of such prospective appointees or nominees. We cannot emphasize too strongly the need for prompt, completed, and discrete processing of these requests.

(2) Requests for tax check reports will be made by the National Office only pursuant to a written request signed by a designated individual who is charged by the head of the requesting agency with the responsibility for such requests.

(3) Tax record checks should be confined to taxes imposed by Chapter 1 of the Internal Revenue Code of 1954.

(4) When field contact with the taxpayer is required, the Director may assign any officer he deems appropriate to perform this task. In this respect, any attempt to substantiate the filing of a return by telephone is not desirable and should be discouraged.

(5) If in the judgment of the Director certain information is of such a nature that it should not be transmitted by teletype, the report should state that additional information is being forwarded by memorandum.

(19)20 TYPE "X" REPORTS

(1) Communications from the National Office for reports on prospective appointees will ask for a Type "X" Report.

(2) District offices should submit a teletype report to the National Office, Attention: CP:D, within three work-days after receipt of the request. The report should be in the format described in (19)50. If complete data is not assembled within the time limit, a report should be sent containing any partial information available, and should indicate the approximate period of time needed to complete the report.

(3) In "no record" cases a field contact in accordance with established procedure should be made with the taxpayer to substantiate whether returns were filed and to determine the place of filing.

(a) These inquiries should be conducted as discreetly as possible, giving no indication to the taxpayer that anything other than a routine check is being made.

(b) Upon field contact, if the taxpayer indicates he has filed his returns in another district, immediately teletype identifying information to the District Director and request that a collateral Type "X" Report be submitted directly to the National Office, Attention: CP:D. Also advise the National Office of such action.

(c) If a field contact is not desirable, the National Office teletype or other communication will contain specific instructions that the taxpayer will not be contacted under any circumstances for information because of the request.

(4) In failure to file cases, returns should not be solicited without first consulting the Intelligence Division.

(19)30 "E" AWARD REPORTS

(1) Communications from the National Office for reports on nominees for "E" Awards will ask for an "E" Award report.

(2) District offices should submit a report to the National Office within five work days after receipt of the request. The report should be in the format described in (19)50.

(a) If complete data is not assembled within the time limit, a report should be sent containing any partial information available, and should indicate the approximate period of time needed to complete the report.

(b) Reports should be made by memorandum using the fastest available mail service.

(3) In "no record" cases, the same procedures as prescribed for Type "X" Reports in (19)20:(3) should be followed.

#### (19)40 SERVICE CENTER PARTICIPATION

(1) Because of the transfer to service centers of information on outstanding balances, and because of the increasing importance of service centers in our overall operations, district offices in preparing tax check reports should make such arrangements as may be necessary with service centers to obtain the required data so that complete and accurate reports will be furnished to the National Office. This may impose additional work on district offices, but with our decentralized operations, the National Office is unable to assume the responsibility for coordinating all details on individual cases of this nature.

(2) The responsibility for submitting tax checks reports to the National Office will, therefore, still lie with the District Director concerned.

#### (19)50 GENERAL FORMAT OF REPORTS

(1) The general format for making Type "X" Reports, "E" Award Reports, or other similar reports follows:

- (a) Name or title of report (Type "X" Report) or ("E" Award Report).
- (b) Name and address of person, firm, or organization.
- (c) Furnish statements indicating:

1. Whether such party has filed returns with respect to taxes imposed under Chapter 1 of the Internal Revenue Code for not more than the immediately preceding 3 years.

2. Whether such party owes any unpaid taxes and, if so, for what years.

3. Whether such party has been or is under investigation of possible criminal offenses under the internal revenue laws and the result of such investigation.

4. Whether such party has been assessed any penalty for fraud or negligence.

#### (19)60 TAX CHECKS ON TREASURY EMPLOYEES

(1) Requests for tax checks on Treasury employees (other than Internal Revenue Service employees) will be initiated by bureaus or offices of the Treasury by use of Treasury Department Form TD 4002.

(2) District offices should complete items 10 through 15 of Form TD 4002 no later than 10 workdays after receipt of the request.

(3) If a lien was filed (item 11(b)), furnish the name, address, amount, date and place of filing, and date of release in item 15.

(4) The completed form should be returned to the originating office by use of double-sealed mailing, the inner envelope to be marked, "To Be Opened By Addressee Only."

(5) In "no record" cases it will not be necessary to contact the taxpayer unless a specific request is received from the Treasury office concerned. In failure-to-file cases, returns should not be solicited without first consulting the Intelligence Division.

(6) If district offices receive requests for additional information regarding items 10 through 15, the request, together with the proposed reply to the requesting Treasury office, should be transmitted to the National Office, Attention: CP:D

#### (19)70 TAX AUDITS IN CONNECTION WITH TYPE "X" REPORTS

(1) Treasury Administrative Circular 189, dated May 12, 1969, (since revised) established requirements for preappointment tax audits on persons not already on Treasury rolls selected for high-level positions, such as Heads of Treasury Bureaus, Assistant Commissioners of Internal Revenue, and Presidential appointments, including persons serving on Presidential Committees.

(2) The responsibility for initiating and coordinating the audits is assigned to the Disclosure Staff, Office of the Assistant Commissioner (Compliance), CP:D.

(3) When the Director, Office of Personnel, Treasury Department, determines that a tax audit on a prospective Treasury appointee is needed, he will ask the Disclosure Staff to initiate the audit.

(a) The Disclosure Staff will telephone the District Director in whose district the taxpayer resides to obtain the returns from the service center or Federal Records Center and to assign an Internal Agent to make the audit.

(b) If the prospective appointee has already moved from his permanent residence to the Washington, D.C., area, it may be advisable to ask the District Director, Baltimore District, or the District Director, Richmond District, to conduct the audit.

(c) If a return for one of the open years has been examined under established procedures, it will not be necessary to re-examine the return. However, a report of the previous audit should be furnished to the Disclosure Staff.

(d) A regular Type "X" Report should be furnished as soon as possible in accordance with established procedures without waiting for the completion of the audit.

(e) A supplemental report of the audit should be furnished by telephone to the Disclosure Staff as soon as the results are known. It should be confirmed by memorandum to which is attached a copy of the audit report.

(f) Because of the extremely tight deadline in these cases, district offices are requested to make every effort to complete the audit within five workdays after receipt of the request. If this is not possible, a telephone or teletype report should be furnished to the Disclosure Staff indicating the approximate time when the audit will be completed.

Mr. ALEXANDER. In this tax-check procedure, Mr. Chairman, the information we furnish is strictly limited to whether the taxpayer has filed returns, has taxes which were due but remain unpaid, or is under investigation. We do not give out tax returns in this procedure and we do not think tax returns are in any way necessary.

#### IRS GAINED FROM BEING PART OF TREASURY

Senator KENNEDY. Let me ask you this. There has been a proposal before the Congress (H.R. 14973) to establish the Internal Revenue Service as an independent commission. Do you have any views on that?

Mr. ALEXANDER. As I have testified before, Mr. Chairman, during my tenure as Commissioner, the Internal Revenue Service has gained much from being part of the Treasury Department. George Schultz and Bill Simon are two of the finest people I have ever worked with. I have worked with Mr. Shultz longer so I can talk a little bit more about him.

He is a man of complete integrity, of complete honesty, and a man whose efforts on the part of the Internal Revenue Service during my tenure as Commissioner have greatly aided the Internal Revenue Service performance of its mission to administer the tax laws even-handedly and effectively and responsively. I cannot speak for the indefinite future, however.

If the Secretary of the Treasury, some future Secretary, were one other than the type of person that I have been connected with, we might have a different situation. I can speak as Commissioner on one aspect of the problem of being Commissioner of Internal Revenue, Mr. Chairman, that goes to this issue. I would hope that future Commissioners might have fixed terms, not longer than 5 years. After all, I think some bankrobbers have to serve only 10 years.

Senator KENNEDY. There must be a different analogy.

Mr. ALEXANDER. I should be able to think of one but I was watching the late show last night.

In this office, to handle it right, you plan from year to year but you live from day to day. As I think both Sheldon Cohen and Mortimer Caplin have pointed out, the only way you can stay in office properly is be ready on a minute's notice to leave the office. That does

not make life any easier. It might be difficult for a future Commissioner, particularly early in his or her term where he or she sees so much to do in bringing about changes that should be made in tax administration to resist possible future efforts to abuse tax administration. That is a problem. After you have been in office for a while, as I have, it disappears, but one must still live from day to day. I am not sure for the indefinite future this is the best way to conduct tax administration, but for the present. I have worked for great people in the Treasury Department. They have been strongly supportive of Internal Revenue and its integrity.

Senator KENNEDY. Well, that is a fine endorsement of those men you have been associated with and certainly as I have indicated in my opening comments, that is certainly the public understanding of what has been happening in the IRS. What we are most interested in is making sure that the public is aware that the IRS has rules and procedures that are followed in regulating its practices, understands how they are derived, and is aware that they were made in the public interest.

You mentioned the IRS sensitive case report procedure. Could we focus on that for a bit?

#### SENSITIVE CASE PROGRAM UNDER REVIEW

Mr. ALEXANDER. I would like to focus on that, Mr. Chairman, because the sensitive case program has been partially suspended, and is completely under review and reconsideration at this time.

The sensitive-case program, which has been in effect for a number of years, has been suspended insofar as information went beyond the IRS. With the full concurrence and approval of Secretary Simon, I do not transmit sensitive-case information beyond the IRS and I do not propose to do so until this program has been completely reconsidered.

Now, the program is under reconsideration right now because involved in our judgment are too many matters.

Senator KENNEDY. Too many what?

Mr. ALEXANDER. Matters. It involved too many types of taxpayers who might be considered sensitive, and furthermore it uses the term "sensitive." What we are concerned about is what is significant to tax administration. This is our real concern. Therefore, shouldn't different standards be applied, isn't a very important case involving an issue of great importance to tax administration, significant to tax administration even if it did not meet any of the present criteria for being sensitive. So we are reexamining the criteria. We are reexamining this program to find out to what extent it should be continued in the exercise of sound tax administration and I am transmitting no information of this nature beyond the Internal Revenue Service.

Mr. Willsey, would you care to amplify?

Mr. WILLSEY. That review process, Mr. Chairman, is well along. I have tentative drafts of materials on my desk right now. We are currently in the process of marking them up to try to establish a system for reporting significant matters up the chain of responsibility so those charged with responsibility for administering the tax

laws will know the important matters, the matters important from the point of view of tax administration, that are currently being considered at lower levels. We would hope that within the next three or four weeks or so we could reach agreement on definitions and criteria for establishing which particular matters are significant and the basic framework for it. Even though we do have some drafts of material on my desk right now we are still in a rather preliminary stage on this.

#### ISSUE-ORIENTED PROCEDURES

Senator KENNEDY. Well, I gather from what you have said here that you look at this as a problem that affects issues. I think from the vantage point of the information and testimony that we have had, it appears that it affects people, or classes of people.

Mr. ALEXANDER. That is part of our concern, sir, and this is the part of the reorientation, the redefinition of criteria that we are undergoing right now.

Senator KENNEDY. How can you avoid that it? If you are looking at a particular kind of issue or question that covers a specific group, how can you avoid singling them out for special attention and special handling? How are you going to be able to protect against it in the future if this kind of procedure exists?

Mr. ALEXANDER. If the procedure is one which applies to issues, for example, issues relating to taxation of church-related business organizations, that could have broad applicability to a wide variety of organizations, that is the kind of thing which when it is being developed in the field, those in the national office should be aware of. We think that it is important to get criteria which identify matters on the basis of the issue involved, and that I think would provide the kinds of safeguards that you are concerned about.

Senator KENNEDY. Are you going back to the sensitive case procedure? Will you have a sanitized version of sensitive case procedure, or what do you plan? Are you abolishing that kind of undertaking?

#### REDUCED SPECIFIC CASE PROCEDURE

Mr. ALEXANDER. We speak of a considerably reduced significant case procedure under which the front office of Internal Revenue is advised about matters which, in the execution of its particular responsibilities, it needs to know about. This is a redefinition of what we need to know about to incorporate the standards that Mr. Willsey described. It is a limitation upon the scope of this procedure. As I have stated, the procedure to the extent that information was transmitted beyond Internal Revenue has already been suspended with the full approval of the Secretary.

Senator KENNEDY. Is there a separate handling of the files on sensitive cases? Do you know whether special GS grade levels handle the special or the sensitive case material and special refund procedures for sensitive case people?

Mr. WILLSEY. That is inaccurate. Those representations are completely inaccurate and erroneous.

Mr. ALEXANDER. That is plain wrong.

Senator KENNEDY. The whole section has been abolished, that is one factor, but if you are going back to this procedure, then we probably

ought to have some kind of understanding as to the procedures which would be followed within the Department in the handling of these cases.

#### SENSITIVE CASE HANDLING

Mr. ALEXANDER. We are developing these new procedures at this time. I realize that a witness has testified earlier this year before another committee and I gather this committee, to the effect that we had some sort of 24-hour watch and that we have a special refund procedure and the like, for sensitive cases. We do not and we are not about to.

Mr. WILLSEY. There has been a misapprehension, I believe, resulting from the characterization of the types of cases in the existing procedures that are classified as sensitive. I think people have unwarrantedly assumed from those characterizations that different treatment is being afforded people whose cases are classified as sensitive. That is completely inaccurate. The only purpose of the sensitive-case reporting procedure was just that, to report information. No particular action has been taken on a case because it was sensitive, and no particular procedures were applicable to cases which were identified as sensitive.

Senator KENNEDY. Well, now, let us take, for example, Mr. Clarence D. Moran, who is your assistant western regional commissioner, on the subject of manual refunds on sensitive and special cases, and evidently this is a quote from a memorandum. It says this memorandum establishes the requirement that all sensitive and special cases involving refunds will be manually refunded, and these instructions are consistent with the requirement that all sensitive and special cases are processed expeditiously.

#### MANUAL REFUND PROCEDURE

Mr. WILLSEY. Miss Alpern, you might explain the difference between a manual refund and other refund procedures. I am not familiar with that memorandum.

Senator KENNEDY. The thing that we are interested in is the special kind of handling which you say is not, has not been the case and is not the case, but I just read a memorandum which would certainly indicate that they are being handled expeditiously and they also have manual refunds. It would seem to me would be a process which is not being followed by—

Mr. ALEXANDER. I will ask Miss Alpern to respond. Mr. Moran is no longer with us. And I know nothing about that memorandum. I would certainly like to see it. I would like to look into this because I do not think that the classification of a case as a sensitive case gives it or entitles it to any treatment which might in any way suggest favored treatment or be harsher treatment than our standard treatment. I think that it waits its turn in line and it is considered to the extent that other cases like it are considered. Miss Alpern.

Miss ALPERN. I do not know of any regular procedure, Mr. Chairman, of that nature pertaining to sensitive cases. I do know, however, that expedited manual refunds have been resorted to in those instances where, through no fault of the taxpayer, the refund has been held up. There have also been some instances where because of faulty IRS handling, large corporations have experienced undue delays in receiving



sizeable refunds. To minimize adverse impact on the corporation as well as on its employees, and to alleviate hardship for any taxpayer resulting from occasional IRS processing error or mishandling, we provided this procedure for manual refunds. But these are the only kind of situations that I know of where refunds have been singled out for expeditious manual handling. It may be that there has been some confusion because these actions were, years ago, called sensitive cases, using that term in the vernacular. We now refer to cases which cause a real inconvenience to the taxpayer as being special in order to distinguish clearly between these and the sensitive-case program.

Mr. ALEXANDER. We will submit a copy of our manual refund procedures for the record.

[The statement of procedures referred to follows:]

# SC AND NCC ACCOUNTING AND DATA CONTROL REFUND TRANSACTIONS

## .06 MANUAL REFUNDS

### (1) Cases requiring a manual refund—

(a) In certain cases it is necessary to issue a manual refund from the master file to assure that specific name or address information appears on the check, to eliminate interest payments or to refund prior to final settlement.

Instances where manual refunds must be issued are:

1. Dual Status returns filed by Taxpayers in District 98 (PCS only).
2. Refunds from processing CP 46 Notices (L or V coded).
3. Refunds from processing CP 42 Notices (L or V coded with words Manual Refund).
4. Civil Cases where a court decision has resulted in a refund to the taxpayer.
5. Refunds on Forms 4466, Corporation Application for Quick Return of Overpayment of Estimated Tax.
6. Refunds on Forms 1120 showing refunds in excess of \$50,000 in the 45-day interest period is in jeopardy.
7. Refunds from processing "EXES TC 840" transcripts.
8. Instances when the refund check is to be issued in a name or address other than that of the taxpayer, but is not a permanent change.
9. All Refunds from the Residual Master File (RMF).
10. Refund or erroneous credit elect.
11. Refunds which will show the husbands first name and surname and the wife's first name and maiden surname.

(2) In other instances it may be DESIRABLE to expedite a refund in cases where hardship, excessive delay in processing, or reducing interest payments is a material factor.

Instances where manual refund may be made are:

- (a) Hardship requests for refund of MF overpayments.
- (b) Duplicate returns relating to unpostable items.
- (c) Taxpayers requests for refunds relating to unpostable items.
- (d) Cases on which the statute of limitations for refund is about to toll.
- (e) Tentative carryback allowance documents from the Tentative Carryback Group.

(3) When to request a manual refund—Employees should always exercise good judgment when requesting manual refunds for master file accounts since the issuance of manual refund greatly increases the possibility of a duplicate refund and will normally increase the processing costs of issuing a refund to the taxpayer.

(a) When it is determined that a manual refund is necessary, make certain that a computer-generated refund has not already been issued or is in the process of being issued.

(b) Whenever possible, take steps to stop the possibility of allowing a duplicate refund being issued. In any case where a generated refund is possible, the accounts register will be researched weekly until the TC 840 posts.

(c) If a TC 846 posts prior to the TC 840, the generated refund will be intercepted per 342.714.01(8) and cancellation action taken.

(d) Normally it is not necessary to initiate a manual refund if the case can be cleared through the National Computer Center in two cycles.

(e) Each employee initiating a manual refund must verify that prepayment credits claimed by the taxpayer are available for refund and that the taxpayer does not have any outstanding balances before transmitting the case for approval. This verification will consist of researching the accounts register of IDRS.

(f) If the refund is from a module where no filing requirements exist, or a final return is filed, input TC 590 or 591 as appropriate.

(g) Service Center Directors may delegate authority to review and approve Forms 3753 for manual refunds issued for master file accounts.

(h) Do not issue a manual refund to any taxpayer whose module shows a freeze code "Z" or TC 914 without prior approval to the Intelligence Control Unit.

**(4) Processing instructions—**

(a) Verify the names and social security numbers on the returns and taxpayers' requests against those listed on the memorandum. Prepare requisitions for missing returns.

1. A return is required before a refund disclosed on an unprocessed return can be allowed.

2. Verify from the latest Accounts Registers that returns related to "Duplicate" returns have not reached settlement before processing a "hardship case" duplicate return.

3. Do not manually refund after item has passed transcription unless an item located as an unpostable or an Error Register can be nullified or rejected.

4. These items will be manually refunded if item will not normally clear in two cycles.

5. If Accounts Register indicates a debit balance, manually refund only the amount of overpayment in excess of debit balance plus chargeable interest.

6. Verify with Special Procedures that there is no bankruptcy action pending before allowance of refund based on a "Hardship" claim or on a tentative carryback application.

7. As offset capability is lost when manual refunds are made, care should be taken to assure that the taxpayer does not have any outstanding balances on any account.

(b) Attach three part Form 3753 to face of each unprocessed return for identification purposes and send to Error Correction for mathematical verification.

1. This will include those returns whose records were nullified in the Unpostable Section of the MF.

2. When these actions are complete, the returns will be sent back to the Accounting Branch (PSC ONLY—DO98—Receive math verified dual status form 1040's which require withholding on interest.)

(c) Compute interest on the overpayment at 6% per annum from the date of overpayment to the date of the refund checks for normal returns. (For Dual Status Refunds, PSC ONLY—DO98).

1. The interest free period is determined by the date on the refund check. If the date of the refund is 45 days after the return due date, interest is due the taxpayer. For manual refunds the date on the check will be the Service Center processing time, mail time (to be calculated by individual Service Center) plus Disbursing Center processing time (2 days).

2. Allowable interest is normal interest less 30% withholding or lower treaty rate, ERROR CORRECTION will have indicated country and rate extreme bottom of return.

3. If zero rate or none shown, reject Dual Status returns to error correction reject unit.

4. For Dual Status returns, prepare appropriate in duplicate, forward original notice to the Regional Disbursing Centers (RDC) with SF 1166 for mailing to the taxpayer.

5. Staple copy of the notice to the return with Part 3 of Form 3753.

(d) Complete Form 3753 Manual Refund Posting Voucher, in triplicate, (Form 3753 may be received with most items completed). Enter Schedule

Date, number, and DLN using Blocks 200-299 and Doc. Code 45. (See EXHIBIT of Form 3753).

(e) If the return is in the unpostable section of the MF, the return record will be nullified in accordance with ADP Handbook 336, Chapter 704.

(f) Obtain approval and signature on the Form 3753, if applicable, attach the taxpayer's request to the district director's memorandum and place in special file.

(g) Prepare Form 813, Document Register, in duplicate, for each block of 100 or less items.

1. Enter in "Block DLN" the first eleven digits of DLN assigned to Form 3753. Enter TC 840 in appropriate block and note MANUAL REFUND at the top of form.

2. List the amount(s) from each Form 3753 on the 813 line with the serial number corresponding to the document.

3. If interest is shown on Form 3753, enter it separately in brackets and to the right of total amount of the refund check to be issued. The first listed amount for each document must be the amount for which a check will be issued. In the example below, the \$3.20 is included in the \$350.00 as well as being separately listed.

Example: 350.00 (3.20) 00

4. Enter in appropriate space the total of check amounts preceded by accounting sign "Dr" to identify this total amount as a debit. Enter the brackets to the right of the check total amount the total of the bracketed interest amount listed.

5. Show the document count by circling the appropriate preprinted serial number. This will be the number plus one of the last refund amount. For a single item circle "01".

6. Enter DLN of return on Forms 3753. Detach original form return; leave duplicate attached.

7. Disposition of documents:

a. Forms 3753 and 813 (original)—input for processing per Chapter 335-710.

b. Returns under 1332 control—input for processing per Chapter 335-408.

c. Forms 813 (duplicate)—for preparation of a master control card per Chapter 342-709.

d. Form 3753 (Duplicate)—with retained copy of SF 1166.

e. If required, TC 841 with same date as TC 840 (schedule date) and for an amount not greater than the TC 840 amount, may be used to reverse TC 840.

#### ASSIGNMENT OF AGENTS TO CASES

Senator KENNEDY. Fine. A good deal of this information was from various memoranda that were provided to us.

Here is one other kind of reference and then we will move on to another point. This is from the Long testimony, and refers to directive MS-12G-65, March 16, 1971. Organizations such as

well-established religious, charitable, educational organizations, Little League, Boyscouts, Community Chest, public education institutions, small social clubs, civic organizations, were assigned to GS-11 grade level of agents with the explanation "sensitivity" of some organizations seldom present questions which tend to excite emotions to the point of being serious concern to the public or to the Service.

Then their testimony continues. More experienced GS-13 agents would be assigned to where

sensitivity organizations at this level characteristically have a substantial sectional and national nationwide membership or appeal basis. The organization may have highly controversial motives such as civil rights organizations, allegedly educational groups having political orientation or groups allegedly formed for social welfare purposes but unpopular methods or goals.

So I know you are looking into it. You have a hold, as I understand

your testimony, on this process, you might look into those particular allegations and charges about how these sensitive cases have been handled differently and, of course, we would be very interested in what procedures, and rules, you are going to promulgate in the future dealing with this particular problem if you have the intention of returning to it.

Mr. ALEXANDER. We will be glad to provide those rules for the future.

[The rules for processing of special cases follow, together with material subsequently received by the subcommittee on suspension of the sensitive case program by the IRS:]

#### ACCOUNTS SERVICES CORRESPONDENCE

##### .44 PROCESSING OF SPECIAL CASES

###### (1) General

(a) District Offices and Service Centers receive a large volume of inquiries from the White House, the Congress, tax practitioners, and taxpayers regarding delayed refunds, erroneous notices, and misapplied credits. These delays and errors are caused for a number of reasons, including taxpayer errors, computer program errors, and processing errors by IRS personnel. These items cause a real inconvenience to taxpayers and tax practitioners and require prompt remedial action. Such items are referred to as "Special Cases," (previously referred to as "Sensitive"). The reason for this special emphasis is to make certain we act timely and appropriately on troublesome situations which adversely affect taxpayer service and damage relations with the public.

###### (2) Identification of Special Cases

(a) Except for the four types listed below, cases are to be classed more on the complexity of action required than on the tone of the inquiry. Cases which are to be designated as Special Cases are:

1. White House or Congressional inquiries.
2. Individual cases specifically designated by the National Office, a Regional Office, a District Director, or a Service Center Director.
3. Combat Zone Decedent Cases.
4. Cases involved with accounts identified on IDRS as "restricted access" accounts.
5. The Technical function will make all adjustments relating to or initiated by, an exchange of information with a foreign country. (Philadelphia Service Center only.)

###### (b) Follow-up inquiries regarding:

1. A previous adjustment of tax liability which did not correct the problem;
2. The movement of credits between various tax modules of the same or of different taxpayers, including computer offset actions;
3. A case involving both Master File and Non-Master File or Pre-ADP returns;
4. A case involving returns or other documents filed with more than one service center; (the center servicing the area in which the taxpayer resides should work the case);
5. A case previously handled by the Technical Section if it involves the same type tax is for the same period;
6. Cases involving multiple taxpayers, such as mixed identity, movement of credits, assessment against the wrong taxpayer, etc.

a. In order to determine whether follow-up inquiries meet the above criteria the Correspondence function will check them against the Adjustment Control Inventory Listing or IDRS. If open items are found listed the inquiry will be sent to the appropriate action unit where the file will be pulled and action expedited. For all items not found in open status, transcripts will be requested on an expedite basis and the inquiries held until the transcripts are received. Upon receipt of the transcripts they will be reviewed to determine if the

action requested by the taxpayer has taken place. If so, initiate an appropriate reply or forward the case file to the function designed to initiate such replies. If no action has taken place and the inquiry meets one of the criteria as prescribed in this procedure, the inquiry will be routed to Technical for "Special" handling. If the inquiry does not meet the criteria, the inquiry will be referred to the proper action function where the file will be pulled and action expedited.

(c) The above criteria are not to be applied to original inquiries. Neither are they to be applied to multiple inquiries, each on a different subject. All such are to be processed under normal pipeline procedures.

(d) The Technical Section has the option of rejecting to its point of origin any case which, in their opinion, does not meet the above criteria. Cases closed by Technical will be transferred to "other" status and held in inventory until the results of their action has been verified.

(e) Process as Special Cases, those cases involved with accounts identified on IDRS as restricted access accounts. These accounts carry a control base entity under generated categories RACS. (See ADP Handbook 300-760.)

### (3) District Office Initiated Cases

(a) Special cases originating at DO level may be received by telephone.

(b) Complete Form 4173. Record name and telephone number of caller.

(c) If enough space is available, record the facts of the case in the lower right corner of Form 4173. If additional space is necessary use memo routing slip and staple to part 3 of Form 4173.

(d) Forward 4173 (and slip) to the ADP Technical function control clerk daily.

(e) Five day report—Within five working days from SC receipt of a telephoned special case, disposition of the case or a status report must be conveyed to the interested District Office function. Expected date of resolution is to be included in this report. If time allows this reply may be made by memo (or SC devised form). Otherwise it must be made by telephone.

### (4) Department of Defense Initiated Cases

(a) Copy of casualty report, date stamped to show when letter was mailed to next of kin, will be received by Service Center.

(b) Research the file to determine any outstanding income tax liability against the decedent, and abate all outstanding balance.

(c) Establish a file on each decedent for future reference.

(d) Early filed claims for the current year will be processed manually.

### (5) Initiation of SC Special Cases

(a) Employees who identify inquiries meeting special case criteria will prepare Form 4173, completing all items to the extent that the information is available.

(b) If the inquiry is received by mail, it will be attached to a Form 4173.

(c) If a telephone referral is received from taxpayer service, the facts will be written (a memo or SC devised form may be used) and will include anything the taxpayer service representative believes will be helpful in completing the case, including the taxpayers telephone number if known. Also prepare a Form 4173.

(d) All special case referrals will be transmitted daily to the ADP Technical function control clerk.

### (6) SC ADP Technical Section

(a) Assignment and Initial Processing

1. Refer to ADP Handbook 357-760 regarding terminal input sequence of IDRS research and IDRS control.

2. If the Special Case criteria are not met, reassign the case to the appropriate function. Make an ACTON entry to record assignment and change the status, if necessary.

3. If an inquiry is received directly from the taxpayer or District Office and meets Special Case criteria, establish control in IDRS with assignment to an examiner in "A" (Assigned) status (See ADP Handbook 357-760). If the case is not accepted, establish control with assignment to appropriate function. Forward all available information to the assignee.

4. If a case is received with a notation that another case for the same taxpayer is assigned to another functional area, contact the original case assignee to determine the proper disposition of the first case. If, when establishing a control of a case, a SUMRY display indicates a case is already established, the same procedure will apply.

5. Cases received relative to established part pay agreements will be processed in accordance with collection related procedures provided in the appropriate references of Part V of the Internal Revenue Manual.

6. Restricted access accounts carry a control base in the entity under generated category RACS. Authorization to access these accounts rests in the Technical function. Attempts to address these accounts by unauthorized employees will result in the display on IDRS of the error message "SPECIAL AUTHORIZATION REQUIRED TO ACCESS". When the operator receives that message, she will immediately notify her supervisor who will take necessary action to have the case hand carried to the Technical function. Establish case control on IDRS immediately upon receipt of the case in the Technical function.

(b) Process Special Cases to completion. Record significant actions with an ACTON entry using appropriate activity codes.

(c) If input of a Master File transaction resolves the case, do not change the status of the case in IDRS to "C" (closed). Route the case file to the control clerk. The control clerk will forward the case for follow-up suspense.

#### .40 REFUND INQUIRIES, UNDELIVERED AND RETURNED REFUND CHECKS

##### (1) Refund Inquiry Control and Processing

(a) Background—Prior to the issuance of the Refund Inquiry Control Procedure, refund inquiries were handled only as part of the mass of correspondence processed in each Service Center. The general lack of expeditious service caused many taxpayer complaints. This procedure requires that all refund inquiries receive priority handling and follow through to ensure prompt service to each taxpayer.

##### (b) Scope

1. These instructions do not apply to "Special" cases.

2. If no change of address or hardship is indicated and the taxpayer's letter is dated within ten weeks of the date he states a return was filed, promptly acknowledge the taxpayer's letter by stamping the incoming correspondence as follows: Internal Revenue Service; The processing of federal income tax returns has not been completed. If you do not receive your refund check or otherwise hear from us by (enter date), please return this letter to the address shown below. Thank you for your patience. (Enter Service Center and address).

##### (c) General

1. This procedure presumes that a specialized processing area is established for handling this type of inquiry.

2. Each inquiry to be processed by these procedures will be handled expeditiously on a first-in, first-out basis. The taxpayer's inquiry must be resolved to the point that a reply can be made within 15 days. If for any reason Correspondence is unable to respond to the taxpayer within 15 days, the appropriate interim letter must be sent.

3. Research those inquiries received without a Social Security Number before requesting the taxpayer to furnish the number unless it appears the inquiry is in response to the annual newspaper listing of undelivered refund checks. In those cases immediately request the SSN from the taxpayer.

4. Refunds frozen due to an invalid SSN will not be released when this type of inquiry is received until the correct taxpayer is determined.

5. Replies to the taxpayer will utilize existing letters for every reply that is practical. Special dictated letters must be held to a minimum to ensure prompt replies to all taxpayers.

6. Refund inquiries for tax years where it appears that the Statute of Limitations may have expired will be researched for positive determination. Generally the Statute Limitation has expired if the refund claim is not filed within three years from the time the return was filed, or within two years from the time the return was filed, or within two years from the time the tax was paid, whichever expires the later. (See Reg. 301.6511). If the Statute of Limitation has expired, prepare an appropriate reply to taxpayer.

##### (d) Initial Processing

1. Initial classification of incoming correspondence recognizes and selects all "Where Is My Refund" type inquiries. Include any Forms

3911 (Taxpayers Statement Relative to Refund) received from the District Offices. These inquiries are delivered on an expedite basis to the Refund Inquiry Area for processing.

2. All inquiries are separated into groups, those with a SSN and those without.

3. Each of the above groups is separated into District Office segments based upon taxpayer's address to facilitate research operations.

4. Enter the taxpayer's name, address, taxable year, SSN (if available) and D.C. on the Form 4436. Enter the date in the upper right of the form.

5. Attach the taxpayer's inquiry to the Form 4436.

6. As volume warrants, but not less frequently than daily, route each group batched by district to Research, clearly identified as Refund Inquiries.

(e) Effect on Undelivered Refund Control and Processing

1. Established procedures for control and processing of undelivered Refund Checks will not be affected by this procedure. However, actions taken, or to be taken, must be noted as appropriate on the Refund Inquiry Check List. This form will then be routed to the Refund Inquiry Area for replying to the inquiry from the taxpayer.

(f) Correspondence—Terminal Processing

1. This procedure is designed to assure that a reply is prepared for each refund inquiry. If any change to the taxpayer's entity is indicated, prepare an entity change request in accordance with ADP Handbook 335.139 or 335.439 as applicable, except when the Undelivered Refund activity has input a 1664 (IRS).

2. Refund Inquiry Check lists received from the Research and Undelivered Refund Control will be separated, based upon indicated findings, and processed as follows for each condition.

a. Amended Return posted with no original:

(1) Issue an expedite requisition for this return—retain the case in an examiner's suspense control file. If 26 weeks or more have elapsed since the due date of the return, search CP 29 correspondence suspense before issuing this requisition.

(2) If return is processable, initiate reprocessing as an original. Initiate appropriate reply to the taxpayer and process as in "1" above.

(3) If return cannot be reprocessed as an original, initiate letter to taxpayer to obtain copy of the original. The reply will be processed as specified for Computer Notice 29. The amended return will be attached to the request for the appropriate letter.

b. Invalid Social Security Number Freeze

(1) If there is a question concerning the name and SSN of the taxpayer, inform the taxpayer that the amount of any refund claimed cannot be verified until correct identifying information is furnished.

(2) If the correct taxpayer can be determined from the information available, initiate action to release the refund.

(a) Prepare an entity change request to correct entity information.

(b) Prepare a notice of action for entry on master file with TC 510 to release the refund.

(c) Cycle the input of these documents to assure that the correct name, address, and SSN will be reflected on the master file prior to release of the refund.

(d) Prepare appropriate reply to the taxpayer.

c. Duplicate Filing Freeze

(1) Screen Adjustment Control Index—If open case is listed, follow "special case" procedure.

(2) If case does not appear on Adjustment Control Index, prepare a request for adjustment to request expedite resolution of the condition by Adjustments.

(3) If condition has been resolved by previous action, prepare appropriate reply to taxpayer.

d. Overpayment Applied to Estimated Tax

(1) Prepare a request for adjustment requesting expedite adjustment action to release this credit as a refund to the taxpayer. The original taxpayer's inquiry and the Accounts Register Transcript must be attached to this form to support the necessary adjustment actions. The decision as to allowance of interest on the refund will remain an adjustments responsibility.

(2) Prepare appropriate reply to the taxpayer.

e. Return Processed, ES Credits on the master file less than those claimed on tax return. In this situation, an 'S' error code will be reflected on the Accounts Register.

(1) Prepare a request for expedite payment tracer action on the missing ES payment. This should be a follow-up action to one previously initiated by this 'S' code.

(2) Prepare appropriate reply to the taxpayer.

f. Return Settled With a Math Error—Error Code 'E' on the Accounts Register. These cases will be considered as request for an explanation of a previous notice.

(1) Requisition the taxpayer's return on an expedite basis.

(2) If analysis of the return indicates a processing error, prepare a request for adjustment requesting correction of the taxpayer's account. Attach returns, Account Register Transcript, and taxpayer's letter to the adjustment request.

(3) If it was a taxpayer error and service processing was correct, prepare letter of explanation which will cause taxpayer to review his records and if necessary submit an amended return. A copy of the reply to the taxpayer and the incoming inquiry will be attached to the return before routing for refiling.

g. Account frozen pending application of overpayment to NMF account (TC 130).

(1) If TC 130 was input by a district within region:

(a) Request expedite action by Accounting to complete offset action or reverse the TC 130 freeze, as applicable.

(b) Prepare appropriate reply to taxpayer.

(2) If TC 130 was input by an out-of-region district: The SC that received the refund inquiry should contact the SC responsible for maintaining the CP 44 file for the district inputting the TC 130. Request expedite action to offset frozen credit or reverse the TC 130 freeze if the CP is overaged.

(3) The second SC should advise the inquiring SC of any action taken.

(4) The SC that received the "Where is my refund" inquiry is responsible for control, acknowledgment and final disposition of the correspondence request.

h. If research shows that no undelivered refund check has been returned, but a refund check issued more than 12 days prior to the date of the taxpayer's letter, send taxpayer the appropriate letter. (The statute expires on a refund claim six years after the check is paid.)

(1) In the event a Form 3911 is received, it is not necessary to send a letter. The Form 3911 may be used in lieu of letter for routing to Regional Disbursing Center.

(2) If a correspondence inquiry contains sufficient information, including signature of the taxpayer (or signatures of joint account), prepare 'dummy' letter, attach taxpayer's letter and route to Regional Disbursing Center.

(3) Retention of a copy of any documents forwarded to the regional disbursing center is not necessary. Follow-up correspondence from the taxpayer generally refers to a previous inquiry.

(4) If correspondence is received after taxpayer's statement or initial correspondence (including Form 3911, if appropriate) has been forwarded to the Regional Disbursing Center, make certain that "stop check" action has been initiated. The taxpayer's letter should then be forwarded to Check Claims Divisions (RDO). Our reply to the taxpayer should state that a



stop-action has been issued and that we are forwarding his letter to Check Claims. The reply should also state that any further correspondence should be directed to Check Claims Division.

(5) In no event should check claims division be called for information on the investigation of a case.

i. Miscellaneous—For conditions not defined in the above instructions, an analysis of the Accounts Register Transcript must be made. Source documents will also be requisitioned as needed to insure a correct evaluation.

(1) Corrective or expedite actions will be initiated as necessary.

(2) An appropriate reply is prepared based upon the results of this analysis.

(3) Note actions taken on Check List and initiate control closing actions.

j. An itemized inventory of all unresolved Refund Inquiries will be made immediately before the close of each normal work week. Any case with a control date assigned two weeks or more prior to the current work week will be listed—including the aged cases detained in Research. This listing, with reason for the delay, will be made available to the Refund Inquiry Control Clerk no later than the beginning of the next work week. The reports will be maintained by report date.

(1) A weekly follow-up on each dated case will be made to ensure expeditious closing.

k. Destroy Form 4436 and any attached correspondence after each case is closed and reply has been made to taxpayer.

(2) Processing Undelivered Refund Checks and Inquiries.

(a) Search for an open 1664(IRS) and follow the procedures for processing the Form 1664(IRS). These instructions will be found in ADP Handbook 342-714.

(b) If there is a request that multiple checks be issued to replace the refund checks, associate the related 1664(IRS) and forward copies 1, 2 and 3 with correspondence to Accounting. File the 1664(IRS) in the Closed File.

(c) Any request to reissue or remail refund checks on the basis of taxpayer correspondence must be released to Accounting within 5 work days of receipt in order to maintain processing time limits. No reply is necessary to taxpayer when this check is being remailed from the service center.

(d) If there is a closed 1664(IRS) and 30 days or more has elapsed since the date on the closed 1664(IRS), initiate a letter to the taxpayer. Maintain a suspense file of the cases and associate the replies with the file.

1. Insert the check description, including the schedule number with the alpha suffix if applicable (e.g. X or B) on the letter. Route the completed copy of the letter to the Disbursing Center.

2. If the taxpayer does not reply, dispose of this file in accordance with IBM 1(15)59-206.

DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
*October 24, 1973.*

#### ORGANIZATION AND FUNCTIONS

The Special Service Staff, Collection Division, Office of Assistant Commissioner (ACTS), was abolished August 13, 1973. The functional statement for the Special Service Staff, 1113.654, published at 37 FR 20972, is revoked.

DONALD C. ALEXANDER,  
*Commissioner.*

DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Washington, D.C., November 13, 1974.

HON. EDWARD M. KENNEDY,  
*Chairman, Subcommittee on Administrative Practice and Procedure, Committee  
on The Judiciary, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: As part of our effort to keep you and the members of the Committee aware of the progress we are making in the areas we discussed at the recent hearings before your Subcommittee, I am enclosing a copy of a manual supplement which has been sent to our field offices. As you will note, this document formalizes our suspension of the previous sensitive case reporting system.

I am hopeful that we can, in the near future, develop a system that will eliminate the unnecessary and questionable characteristics of the former system, but that will still keep management officials apprised of significant developments in the administration of the tax laws. We will, of course, keep you advised of the results of our efforts in this regard.

With respect to the questions submitted to us subsequent to the hearings, we anticipate having a detailed response delivered to you within two weeks.

With kind regards,  
Sincerely,

DONALD C. ALEXANDER,  
*Commissioner.*

Enclosure.

Manual Supplement (48G-225)  
SUSPENSION OF SENSITIVE CASE REPORTING SYSTEM

*November 13, 1974.*

SECTION 1. PURPOSE

The Sensitive Case Reporting System has been suspended and will remain suspended until a modified and curtailed system has been developed and implemented. Pending development and implementation of a new Reporting System, field offices should keep appropriate management levels advised of matters significant to tax administration.

SECTION 2. EFFECT ON OTHER DOCUMENTS

Section (12)30 of IRM 4810, Audit Reports Handbook; IRM 5132; Subsection 132 of IRM 5(17)00, IDRS Handbook; IRM 8(23)41 and IRM 9551 are amended and supplemented and should be so annotated by pen and ink with a reference to this Supplement.

DONALD C. ALEXANDER,  
*Commissioner.*

WORK ASSIGNMENTS BASED ON COMPLEXITY

I would like to comment on the last matter you brought out, Mr. Chairman. We have an obligation to the Civil Service Commission and to the Government as a whole to assign work to agents and tax auditors of different grades by the complexity and difficulty of the work.

The document that was quoted from—"Manual Supplement 48G-166"—provided instructions for a test to determine appropriate guide-

lines for the assignment of exempt organization cases. These guidelines were entirely in line with our policy of assigning work by grade level. In the exempt organization area, the Service has the responsibility to recognize the exempt status of organizations whose purposes and activities conform with the governing statute. It is also our responsibility to assure the general public that tax-exempt status is not allowed to remain with organizations not entitled to such status.

A potential for controversy is inherent in determining the tax-exempt status of religious, charitable, educational, and civic organizations. Therefore, administering the exempt organization provisions is, by its very nature, a sensitive matter and sensitivity is an important factor in determining the grade level of a case. Certainly, grade 13's get more complex and different matters than do grade 11's and certainly grade 11's get more difficult and complex matters than grade 9.

Senator KENNEDY. Obviously we welcome your explanation. Part of the problem, which is the purpose of these hearings, is that these procedures are marked secret. So you have statements that are being made by individuals—representations, charges, allegations—which are made in bits and pieces, and when we are unable to gain the information or access to it, the public becomes confused and misled and suspicious. This obviously is what we are trying to avoid. I am sure that is what you want to avoid. And obviously, what we would like to avoid.

#### SPECIAL PROCEDURES FOR REFUNDS IN EXCESS OF \$100,000

Mr. WHITAKER. If I may make one point for the record to make certain that we have not misstated anything. We do have one special refund procedure required by the Internal Revenue Code which involves refund in excess of \$100,000. They have to be approved by the Joint Committee before they are paid or honored, and so there are some special procedures there. I do not believe that is what is involved in those communications you had in mind.

Mr. ALEXANDER. There the special procedures depend upon the amount of the refund rather than the sensitivity or lack of sensitivity of the taxpayer himself.

Senator KENNEDY. How about in rulings that affect savings of over \$100,000 to the taxpayers; should the Congress have a chance to know about those as well?

Mr. ALEXANDER. I understand the Joint Committee on Internal Revenue Taxation is thinking about amending section 6405 of the Code which, as I recall, is the provision requiring Joint Committee review of all refunds over \$100,000, to change the \$100,000 to \$200,000 and to provide for a right of review, exercised on a selected basis, of deficiency cases and other cases that might well involve rulings but do not involve refunds. We would welcome that change.

Senator KENNEDY. What about savings, say, a rule that is going to save a particular taxpayer that amount of taxes?

#### CONFIDENTIALITY OF PRIVATE RULINGS REEVALUATED

Mr. ALEXANDER. This leads into the private rulings problem that was discussed by all three witnesses at your prior hearing.

Former Commissioner Caplin, in particular, pointed out the nature of the problem and suggested a remedy for the issue of secret law

and uneven treatment. As former Commissioner Caplin pointed out, we issue about 30,000 rulings yearly. We do our best to publish, for the guidance of all, all rulings that break new ground. We have new interpretations of old provisions, new interpretations of new provisions and rulings of reasonably broad application. We have a duty to publish these rulings. But despite the fact that under the leadership of Mr. Gibbs, the technical function of Internal Revenue has made great strides in publishing rulings (and we are doing a lot better this year than we did last year) we still publish less than a thousand out of the 30,000 we issue annually. As Mr. Caplin pointed out, the function of issuing private rulings is not only beneficial to the taxpayer but it is beneficial to the Internal Revenue Service and in a number of ways and it is up to us to try to manage our resources efficiently and issue as many of these rulings as accurately as they can be made, as quickly as they can be made.

On the other hand, we are concerned about the possibility of secret law or the possibility of the appearance of secret law in this area. We are concerned about the possibility of uneven treatment of taxpayer A versus taxpayer B, taxpayer B getting a private ruling and taxpayer A not getting one or perhaps not asking for one. We have agonized over this problem for over a year. We have decided that we will implement a new policy under which taxpayers applying for rulings in the future will, as a condition of obtaining the rulings, waive their right of confidentiality, with some limited exceptions that we are still considering. I will come to these in a moment. So in the future we intend to give taxpayers notice of this requirement that we intend to impose as a condition to obtaining a private ruling: the taxpayer must give up his or her or its right of privacy to the extent of this the facts disclosed in the ruling. We intend to make these rulings available to the public. Now as former Commissioner Caplin—

#### NONDISCRETIONARY ASPECTS OF SEEKING A RULING

Senator KENNEDY. Is that for every ruling?

Mr. ALEXANDER. This creates a special problem in some limited instances. In certain cases a taxpayer cannot take a particular action unless the taxpayer receives Internal Revenue approval in advance. Examples are the creation of a foreign corporation under section 367 of the Code, transfer to foreign trusts under section 1491, and more important, changing accounting methods or accounting periods. Here we have a separate compartment of problems. The taxpayer cannot take this particular action without a ruling; there is nothing discretionary about the taxpayer seeking a ruling. This imposes, of course, an obligation on us to consider the taxpayer's application and if possible to rule one way or the other. Here, is it fair for us to ask taxpayers as a condition of obtaining the ruling which in turn is a condition to the action to make public trade secrets, or confidential financial or other information which would otherwise be protectable under the Freedom of Information Act? We are concerned about this segment of the issue. We intend to consult further with counsel and perhaps with the Department of Justice as to this segment. But these rulings are not the main body of rulings which create the problem of possible secret law or possible unfair treatment. As to those rulings,

we intend to impose a condition that the taxpayer waive his right of confidentiality as a precondition to obtaining a ruling from us. This is a major change in our present procedures. Mr. Gibbs is in charge of this.

#### CONSIDERATIONS APPLICABLE TO DISCLOSING PRIVATE RULINGS

Senator KENNEDY. Tell us when this is going into effect, and what percentage of the 30,000 would actually be covered.

Mr. GIBBS. In predicting the future maybe we ought to take a look at the past. As you probably know, for the last several years, my predecessor in the Assistant Commissioner office has been studying this whole question of the desirability of eliminating the appearance of secret law on the one hand versus the competing consideration of the disclosure requirements that we not release certain confidential information on the other.

These are simply two of the considerations. There have been many other considerations such as the impact upon a timely processing of the ruling requests, in the event you are going to make them public, and I would like to comment for just a second on that because this gets to your question as to timing.

On the one hand, we have taken the position that a taxpayer cannot rely on another taxpayer's private letter ruling. That is, the letter ruling that is issued to the particular taxpayer is good for that taxpayer only. That is all well and good until you come to a competing principle, with which we agree, that all taxpayers similarly situated should be treated the same way. Unfortunately, our view sometimes differs as to whether a taxpayer is similarly situated to another taxpayer from the view of the counsel representing the taxpayer. We do anticipate that releasing the letter rulings, which to some extent adds the Internal Revenue sanction to the private rulings, may cause us processing problems, delays and so forth, in the future in trying to meet this problem and in trying to at the same time release the rulings on a timely basis and maintain the confidentiality in the instances in which the Commissioner mentioned. We have had, as I said, several years to take a look at the problems. We are at the point now of implementing procedures and I would say that from the standpoint of what we do it is important to realize that we must announce this ahead of time to the public because under our present procedures we tell the public that before a letter ruling is released or is published in the form of a revenue ruling (and these are under our published procedures), we will eliminate all confidential names, information, and so forth. Because of the magnitude of the change, this will require, in my opinion, very careful thought as to our internal procedure before announcing the internal procedures so taxpayers will understand the importance of the change in terms of the timing. The Commissioner has asked us to go forward with the preparation of a procedure. I would hope that that could be accomplished within the next several months.

Senator KENNEDY. That will be completely prospective?

Mr. GIBBS. It will have to be.

#### REQUESTS FOR TECHNICAL ADVICE NOT TO BE DISCLOSED

Mr. ALEXANDER. It will have to be, Senator Kennedy, because of the law and because the rulings that we have issued in the past and the

rulings that we have in the pipeline at this time were based upon requests for ruling from people who had every reason to expect and believe that we would hold their request confidential. Now this procedure that Mr. Gibbs and I have described would not apply to other categories, matters called requests for technical advice. We think a request for technical advice is part of the audit process. It is a matter that arises when there is a dispute as to the interpretation of a particular provision of law or regulation in an audit, and the taxpayer or our Revenue agent may ask that the national office, Mr. Gibbs' technical experts, consider the issue, to see how the law should be applied in particular doubtful instances. As long as we have a law that is as complex as our present law, we are going to need to have expert technicians in our national office deciding these difficult questions for our field officials. These would not be disclosed. We consider them to be a basic part of the audit process and subject to the basic rules of protecting the rights of privacy of both tax returns and our investigations of those returns.

#### APPROPRIATE FORM OF WAIVER REQUIRED

MR. WHITAKER. May I make one further comment, Mr. Chairman? We do have to work this procedure out very carefully particularly the appropriate form of waiver for the taxpayer to sign because otherwise in the opinion of my office, we run afoul of the present provisions of sections 6103 and 7213. This is an integral part of the prospective procedure.

SENATOR KENNEDY. As I understand, you have requested additional personnel to do this from the Congress, have you not?

MR. ALEXANDER. We have requested additional personnel, Mr. Chairman, but it was really not in anticipation of this work that we are describing before you. We realize that this is going to put additional workload on the Internal Revenue Service in an effort, as Mr. Field put it, to be right the first time. We think we should be right the first time.

SENATOR KENNEDY. Certainly I think you are to be commended for developing that procedure and I will certainly help in every way possible to get the additional manpower that is necessary to go ahead. I think this is a commendable step, and I think people ought to know about it.

[A press release from August 9, 1974, announcing the IRS policy concerning prospective disclosure of tax rulings, follows:]

DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Washington, D.C., August 9, 1974.

#### NEWS RELEASE IR-1409

WASHINGTON, D.C.—The Internal Revenue Service today announced additional details about its plan to open for public inspection tax rulings it will issue to individuals, corporations and other taxpayers.

The IRS announcement expanded on testimony given by Commissioner Donald C. Alexander on July 31 before the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee.

In general, the IRS plan requires taxpayers requesting rulings to submit waivers of confidentiality with their requests.

The IRS issues approximately 15,000 advance rulings to taxpayers who request the Service position on the application of the tax laws to given situations. An additional 13,000 rulings are issued on required applications from taxpayers who wish to change their accounting periods or methods.

The IRS decision to open rulings to the public will be implemented as soon as it resolves various questions, such as the extent to which waivers of confidentiality should be required as to trade secrets in situations where the law requires a taxpayer to obtain a ruling before proceeding with a transaction.

The IRS said it is prohibited, by law and regulations, from opening previously issued rulings to public inspection.

Under present procedures, the Service publishes between six hundred and seven hundred of the advanced rulings each year after deleting all information that would identify the taxpayers involved. These are published in the weekly Internal Revenue Bulletin which is available from the Government Printing Office. Rulings selected for publication are those which set precedents or which apply to a great number of taxpayers, and after publication in the Bulletin, they may be relied upon by other taxpayers. Prior to publication, however, only the taxpayer to whom a ruling is issued can rely on it, and this would continue to be true under the new IRS procedure.

The public will be kept advised by further announcements about progress in placing the new rulings plan into effect, the IRS said.

The IRS said that it would welcome comments from interested parties. Comments should be directed to the Assistant Commissioner (Technical), Internal Revenue Service, Washington, D.C. 20224.

#### TAX ANALYSTS CASE STILL PENDING

Senator KENNEDY. Well, counsel has just reminded me, I guess it is a question now before the courts, whether a rule is a tax return in any event. Is that not the case?

Mr. ALEXANDER. There is an issue.

Senator KENNEDY. The *Tax Analysts* case?

Mr. ALEXANDER. The *Tax Analysts* case is still pending on appeal in the circuit court, Mr. Chairman.

Senator KENNEDY. Do you have any idea when that is going to be decided?

Mr. WHITAKER. We really don't. There is no way we can predict.

Senator KENNEDY. That doesn't affect your present plans, does it?

Mr. WHITAKER. No, sir, and the new policy of the Commission as announced will have no bearing, we think, on our position in these cases.

Mr. ALEXANDER. Because these cases involve past rulings which were submitted to us in reliance upon the taxpayer's understanding that the material submitted and our ruling would be all confidential. The taxpayers did not waive their legal rights.

I would like to discuss the manual with you.

Senator KENNEDY. That is where I was, over on page 4 of your testimony, about the manual.

#### RELEASE OF MANUAL

Mr. ALEXANDER. Mr. Chairman, what we did in this connection was, after deciding that the manual——

Senator KENNEDY. Could I just have a little background on the intensive review which you talk about in terms of page 4, in the midpart of your testimony, about what portion of the manual should be released? You are aware that this review was supposed to have been completed in 1973, June 1973, according to the testimony of the former Commissioner. So can you give us any idea of when this review can be expected to be completed?

Mr. ALEXANDER. I would like to predict the exact completion date, but it is easier to predict where we are right now. This did not move as

fast as my predecessor predicted with some optimism sometime back. Perhaps because I don't want to show the same sense of optimism, it would be difficult for me to predict exactly when the committee chaired by one of Mr. Whitaker's managers will complete its work and when my managers will complete their work for the submission of the final material to the committee. I think we have only one function, the automatic data processing material, but it covers a thousand pages yet to be considered by this committee.

I would surely hope and expect that this would be done within 90 days but, Mr. Chairman, I don't want to engage in a prediction that I may not be able to honor. What I can do is tell you what we have done. Although we did not get as early a start as I wish we had, we have 36,453 pages of the manual in the reading room.

Senator KENNEDY. Of course——

Mr. ALEXANDER. As of July 26.

#### CRITERIA FOR WITHHOLDING MANUAL MATERIALS

Senator KENNEDY. That really doesn't in and of itself make a great deal of difference since you know a great deal of the manual relates to job descriptions and information of little value to the public. Really the question is what kind of information is not being released. Will you describe the criteria for withholding manual materials, and provide for our record a breakdown by chapter or part of what has been released in full and what has been partially released and what has been finally withheld?

Mr. ALEXANDER. The criteria in general, Mr. Chairman, are the types of the information and instructions which former Commissioner Caplin referred to as relating strictly to law enforcement, given inadequate resources both now and in the future, to handle the task of tax administration, tax enforcement, and tax collection. We have endeavored, in good faith and through a massive effort, to separate the manual into the very large portion which will be released to the public and the very small portion which in the exercise of the responsibility entrusted to us is both not releasable under the Freedom of Information Act and not information which should be released in the sound administration of the law, because the release of this information would seriously impede the exercise of our responsibilities.

#### MUCH OF MANUAL HAS BEEN RELEASED

Now, we found, in substantially completing the work, that more than 80 percent of the total pages remaining in the manual are releasable, with more to go.

What we have done is do our best to eliminate secret law through manual provisions, and anything that involves secret law has been released, subject to this small part that we are still working on.

What we have done is fill the tax services, including that of Mr. Field's organization, with material for them to publish to the public, and what we intend to do is continue down this same track which, as former Commissioner Caplin pointed out, is in compliance with the Freedom of Information Act and our responsibilities under this act, and in compliance with our responsibilities to administer the tax laws.



Senator KENNEDY. Well, do I understand that with the exception of the exemptions that are spelled out in the Freedom of Information Act, that all with regards to confidentiality, and investigative report materials, that everything else will be released?

#### STANDARDS FOR RELEASE OF INFORMATION

Mr. ALEXANDER. We set a dual standard. The first: Is this material properly protectable under the Freedom of Information Act?

Second, is this material the type of material which should be kept confidential in the exercise of our tax administration responsibilities? If something meets both tests we do not release it to the public. Is that correct, Mr. Whitaker?

Mr. WHITAKER. That is right. If I may amplify, Mr. Chairman.

Senator KENNEDY. Could you give me the two besides the FOIA?

Mr. ALEXANDER. The second criterion is whether tax administration, our job, of administering the taxes——

Senator KENNEDY. What is the other? It all falls into tax administration or the exemptions under the Freedom of Information Act.

Mr. ALEXANDER. First, is whether the material falls within one or more of the exemptions in FOIA.

Secondly, whether the material should be protected, should be held confidential, in the exercise of our tax administration responsibilities, even if it is protectable.

#### LAW ENFORCEMENT MATERIAL

Senator KENNEDY. Let's talk about the tax administration responsibilities, the sort of materials that you keep in there.

Can you describe that to us?

Mr. ALEXANDER. Among other things, tolerances for enforcement actions, Mr. Chairman.

Senator KENNEDY. What are some of the others? Could you talk generally about the type of materials that are in there?

Mr. WHITAKER. Basically I think, Mr. Chairman, it is exactly the same type of thing as a tolerance. It is an instruction or a procedure which the Internal Revenue Service uses in law enforcement and the release of this would seriously interfere with the law enforcement function and tax administration of the Service.

May I clarify some points. Some of the cases have taken the position, which we think is a correct legal position, that this law enforcement type of material is outside the framework of the Freedom of Information Act. It does depend on a specific exemption. The cases have said this. What we did was to establish in my office a committee of seven lawyers, all of whom are grade 15, experienced lawyers. My effort on this part was to make certain that those portions of the manual which it was determined should not be made public as law enforcement manual had been reviewed by experienced attorneys so we could conscientiously take a position that we could defend this matter in court. And this attitude which we have taken is, in our view correct. We have reviewed every page, every word, that is to be in the law enforcement manual and we believe that we can protect it under the present cases from disclosure. We have applied the right principles

and that we believe everything that is being separated out as law enforcement manual is properly protectable under the present law.

Senator KENNEDY. Well, let's talk a little bit about that. This is the administrative manual; is that right?

Mr. WHITAKER. The administrative manual is that part which we are releasing to the public. We have substantially completed our work. It is now just a matter of the internal routine processing including the indexing in order to make it available.

Senator KENNEDY. These tolerance levels, could you elaborate a little, for the benefit of what you are talking about here, without getting into the details? When you talk about tolerance level, what are you talking about here?

Mr. WHITAKER. Well, in part, for example, Mr. Chairman, the criteria that are used to select tax returns for audit, for initial investigation.

Senator KENNEDY. Excuse me.

Mr. WHITAKER. The criteria that are used for the selection of a tax return for audit. This is a matter which we think legally is protectable and which the Commissioner feels should be protectable in the interest of tax administration.

Mr. ALEXANDER. We think that if we release that we would be drawing a road map for tax evaders. We think we have a responsibility to the public to release all matter that smacks of secret law, but we think we have a responsibility not to release this sort of information.

Senator KENNEDY. These are the procedures you follow in auditing various tax returns?

Mr. ALEXANDER. The selection of returns for audit, Mr. Chairman, involves processes, tolerances, and determinations which we think—in view of our limited manpower, in view of the fact that we can audit only slightly more than 2 percent of the total number of returns filed—we must keep confidential in order to do this job, in order to assure the many who do pay that the few who don't will be called on to do so.

Senator KENNEDY. And you are concerned that if the public knew the percentage of various returns that are actually being audited in certain areas, that they might attempt to evade or avoid their taxes?

#### SPECIFIC CRITERIA FOR AUDIT SHOULD BE PROTECTED

Mr. ALEXANDER. It isn't so much that, Mr. Chairman, knowing the percentages of returns that are audited in certain areas, because the public knows and should know that the audit process is topheavy. We audit a larger percentage at the top than at the bottom. Instead it is the knowledge of the particular criteria for the selection of a particular return in a particular category. We think that that must be protected so that the few would be unscrupulous who would not recognize their obligations as citizens would not be given a road map to tax evasion.

Senator KENNEDY. The tolerance levels are known certainly to the people within the Service itself, are they not?

Mr. ALEXANDER. No.

Senator KENNEDY. The investigatory techniques?

Mr. ALEXANDER. Not entirely, not entirely.

Senator KENNEDY. Well, it certainly is among those who are doing any of the auditing.

Mr. ALEXANDER. I doubt even there. Miss Alpern?

Ms. ALPERN. These tolerances are based upon scientific surveys known as TCMP and I believe, Mr. Chairman, you may be confusing TCMP survey results which lead to development of the tolerances that the Commissioner and Mr. Whitaker are discussing with the size and kind of audits. The tolerances are based upon the results of our scientific studies which, in turn are turned into formulas based upon weights given to various parts of the tax returns. This enables us to select tax returns by computer selection which will give us the area for audit in which we can get perhaps the greatest change. But very few people know about those tolerances.

Mr. ALEXANDER. A revenue agent out in the field simply knows the return has been assigned. It is not necessary for that revenue agent to know the tolerances, the functions, which selected that return in the first place.

Senator KENNEDY. He knows the investigatory techniques, though.

Mr. ALEXANDER. Yes; he does, and we have disclosed, we have disclosed very much in the way of investigative techniques quite recently. I had hoped to have before you, Mr. Chairman, the manual publications of Mr. Field when, one of the earlier witnesses, but unfortunately Mr. Field withdrew this material from us this week, so I could check, show you how much in the way of information we have released including the type of information that you described. We have disclosed this in an effort to try to make sure that the little taxpayer, the taxpayer who isn't represented by a sophisticated expensive practitioner or one recently separated from the Internal Revenue Service, gets as fair treatment as the taxpayer who is represented. We have done our best during the last year to communicate to taxpayers, all taxpayers, their rights as well as their responsibilities. We intend to do more on this next year.

Senator KENNEDY. What prevents those within the higher echelons of, say, the Internal Revenue Service from returning to private practice? They are aware of the various tolerance levels.

#### TOLERANCE LEVELS UNDER REVIEW

Mr. ALEXANDER. Well, tolerance levels change, I am glad to say. They are constantly reviewed and continually revised, in the first place.

Second, we can't change the world and say that people have to wipe their memories clean but we can see to it that people who leave the Service, particularly people who leave the Service from high positions, live up to their responsibilities and do not in any way make any improper use of information they have gained. Mr. Whitaker and I have had some long discussions about this because we might presumably be the first involved in this new direction.

Mr. WHITAKER. I might comment just parenthetically, I do not personally know these things.

Senator KENNEDY. You see, the problem is that we want to make sure you have a system to insure there is going to be adequate enforcement of the law. On the other hand, it might appear to the public that those now working or who have previously worked at the Internal Revenue

Service understand the dynamics of investigatory techniques, how tolerances are established, and the general kind of tolerance levels, and have inside information, so to speak, about the working of the IRS which obviously the general public doesn't have.

How do you protect the public from people who have that inside information—people that leave the service, go in and out of the tax bar—from using it to their advantage, or to the advantage of others?

#### CONTROL OR MISUSE OF INFORMATION BY EMPLOYEES

MR. WHITAKER. I think there are several answers to it, Mr. Chairman, if I can comment briefly.

First, for one thing, the present conflict of interest statutes and Circular 230 which governs the practice of people before the Internal Revenue Service contain prohibitions against former employees handling any matter which was pending before them, or any matter of which they had any personal knowledge while you were in the Service. These are normally matters which the canons of ethics would govern anyway. This is one control.

Another control is that under the statute, no one who has been in a responsible position can, for 1 year after leaving the Service, represent taxpayers in connection with any matter which was under his official responsibility while in Government. So many of these things change almost from day to day, from month to month, and certainly from year to year, that the knowledge that an individual practitioner might acquire today would be worth very little to him in the way of guiding a taxpayer into an evasion of taxes tomorrow. So that it is kind of a self-policing system.

Obviously what people on the Commissioner's staff and people on my staff who come and go gain a knowledge of how to practice tax law, to some extent a knowledge of the people, and a knowledge of how to get things done. They don't really make a living on how to teach taxpayers on the outside to evade the tax laws.

So from that standpoint, I really don't think that this kind of criteria is the type that a great deal of us would know or have the capability of using even if we had it. For example, the computer formula is something that I doubt if anybody in this room other than perhaps Ms. Alpern could do anything with even if they had it. That doesn't mean that if it were released people with computer expertise could not obviously use it. It is simply a matter you can't retain in your mind. However, it is a matter which could harm the Service, and it does need to be protected.

SENATOR KENNEDY. So, if you released those tolerances, how could that information be used to advise clients to evade taxes? How would that work as a practical matter?

MR. WHITAKER. A great deal of it would enable taxpayers in particular categories to be able to realize that they could take particular types of deductions with a fair degree of predictability that they could get by with it. That is part of it.

SENATOR KENNEDY. Even though it would be illegal?

MR. WHITAKER. Yes, sir.

MR. GIBBS. Overstate their deductions.

## RELEASE OF TOLERANCES HARMFUL TO TAX ADMINISTRATION

Mr. ALEXANDER. Just short of the particular tolerance level they could underpay their tax, turning to the collection side, just short of the particular tolerance level at which enforcement action would be taken.

This ties in exactly with what former Commissioner Caplin said on page 424 of the transcript when he stated his view that it was proper and desirable for the Service to insist on the clear policy of resisting disclosure of portions of the manual whenever instead of informing the public on the meaning of the law, the disclosure would enable people to violate the law and escape detection. I think we see it precisely the same way.

Mr. WHITAKER. Until we can get to the point none of us want to get to that every tax return must be given a detailed audit there is bound to be the fact that some taxpayers can go undetected.

Mr. ALEXANDER. In striking this particular balance not only is the material of the kind that we are talking about not required to be disclosed under the act, therefore, protected under the act, but it is material the disclosure of which would enable the unscrupulous to violate the law by deliberately claiming nonexistent deductions up to a tolerance level or by deliberately refusing to pay an admittedly owed tax up to a tolerance level. And here any benefit to be gained by release of information whatever, to be gained is, we think, far outweighed by the detriment to tax administration.

Senator KENNEDY. I would think that it would be a very risky thing for attorneys to advise their clients to do, since they don't know even that a tolerance level is going to be changed—you might alter it or change it at any particular time. I would think if we understood that lawyers were doing this, the public interest would be served by changing the particular kind of tax form, or whatever was being used as the principal means of evading the taxes. I am not completely convinced in my own mind—and I am certainly not steeped in the administration of tax laws—that laying these things out in the open would not be more in the public interest than the suspicions and secret procedures which are extant at the present time.

Mr. ALEXANDER. We are seeking to follow this middle course. We are doing our best to lay open to the public all matter involving, as Commissioner Caplin put it, the meaning of the law, all matter involving secret law, all matter except that which is both protected from disclosure under the Freedom of Information Act and material the release of which would hinder our job of tax administration, with the staff that at best can audit less than 3 percent of the total income tax returns filed in this country.

## DECISIONS ON RELEASE OF INFORMATION

Mr. WHITAKER. May I also make this comment, that the decision as to what to protect, and what should be protected has been made by and large by the career people in the Internal Revenue Service. They have applied to it their years of experience in tax administration.

I recognize we may have differences of opinion but it is those people who have told the Commissioner and told my lawyers that this is a matter which they feel as career people we must protect in order to enable us to do our job.

Senator KENNEDY. That is not unlike the attitude which was taken by most of the agencies when we first considered the Freedom of Information Act. If you look through the record, practically every administrative agency opposed the passage of the Freedom of Information Act because they thought from an administrative viewpoint it was going to be difficult, and going to be cumbersome, and time consuming, and costly, and yet it was decided that in the public interest that that legislation ought to be passed, it was passed, and we have just passed another bill this year.

Just before going into the final area, I understand we will get some publication for our record of the current status of disclosure of manual materials and that in the near future the review process will be completed and outstanding requests will be answered.

Mr. ALEXANDER. That is right.

[The material referred to follows:]

## CURRENT STATUS OF RELEASE OF INTERNAL REVENUE MANUAL

### PART 0—PERSONNEL AND TRAINING

Entirely Available to the Public.

### PART I—ADMINISTRATION

Available to the Public, except for a small portion which has been determined to constitute exempt law enforcement material, a single handbook still under consideration, and a series of handbooks dealing with Emergency Relocation Planning which are to be removed from the Manual.

Parts II and III—Do not currently contain any text.

### PART IV—AUDIT AND INVESTIGATION

Extensive portions have been made available to the Public, however the final determination of exempt law enforcement material has not been completed.

### PART V—DELINQUENT ACCOUNTS AND RETURNS

Available to the Public, except for a small portion which has been determined to constitute exempt law enforcement material and several entries on an Index currently being revised.

Parts VI and VII—Do not currently contain any text.

### PART VIII—APPELLATE

Available to the Public, except for a small portion still under consideration.

### PART IX—INTELLIGENCE

Extensive portions have been made available to the Public, however the final determination of exempt law enforcement material has not been completed.

### PART X—INSPECTION

Extensive portions have been made available to the Public, however the final determination of exempt law enforcement material has not been completed.

## PART XI—TECHNICAL

Entirely Available to the Public.

## PART XII—STABILIZATION

Entirely Available to the Public.

ADP Handbooks—Extensive portions of these detailed instructions for Automatic Data Processing have been made available to the Public (some in edited form), however the final determination of exempt law enforcement material has not been completed.

## STATEMENT OF LESTER BRIDGEMAN

Senator KENNEDY. We had a statement from Mr. Lester Bridgeman, which is going to be made a part of the record, which covers many of these areas that we have raised this morning about the manual. (The statement appears at p. 164 of this volume.) We appreciate his willingness to work with the committee and his contribution and we are going to include that at an appropriate place in the record.

## REMOVAL OF "OFFICIAL USE ONLY"

Senator KENNEDY. On page 5, paragraph 3, you have, about instructions of the issue to remove official use only for all portions of the internal revenue manual.

I am sure you are probably aware about now of the manual transmission of July 3, 1974, 4 weeks ago, all things disclosure of official information. I note on the corner of each page it has official use only.

[The front page of the document referred to is reproduced on the following page.]

# Manual Transmittal

## Internal Revenue Service

1272-4

Date of Issue:

July 3, 1974

### Purpose

This transmits text for Chapter (25)00, Disclosure of Tax Information in Answering Congressional Inquiries, of IRM 1272, Disclosure of Official Information Handbook.

Manual Supplement 12G-88, dated April 30, 1974.

### Effect on Other Documents

Manual Supplement 12G-88, dated April 30, 1974, is obsolete.

### Removal and Insertion of Pages

#### Remove:

Table of Contents (18)30 — (24)50

#### Insert:

Table of Contents (18)30 — (25)70

Text (25)00 — (25)70

### Nature of Material

Instructions in Text (25)00 were issued originally as

CHARLES A. GIBB

Chief, Disclosure Staff

Office of Assistant Commissioner (Compliance)



Mr. WILLSEY. I noticed that this morning at 7:30 and I personally am extremely embarrassed by it and one of the notes in the front of my book before coming up here was to check and see just exactly how that happened when we had been assured that the instructions for printing manual supplements were that this "official use only" designation was being deleted from all manual transmittals that were subject to disclosure.

As I say, this is a matter of personal embarrassment to me because I just noticed it this morning. It was one of the things that I had marked down to take action upon as soon as we got back to the building this afternoon.

Senator KENNEDY. Well, there are a lot of things that happen in my office, too, so—

Mr. WILLSEY. There is no adequate explanation for it.

Senator KENNEDY. We want to make sure that it really doesn't happen and steps are taken to avoid that.

Mr. WILLSEY. That is exactly correct, you can be assured of that.

Mr. ALEXANDER. I am glad to hear we are not the only place where things slip through the cracks, Mr. Chairman.

[The following letter concerning the use of the "Official Use Only" legend was subsequently received by the subcommittee:]

DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
*Washington, D.C., Oct. 2, 1974.*

Hon. EDWARD M. KENNEDY,  
*U.S. Senate,*  
*Washington, D.C.*

DEAR SENATOR KENNEDY: During the course of the July hearings on Freedom of Information, you indicated an interest in instructions pertaining to the use of the "Official Use Only" legend on internal management documents issued by IRS field offices.

Regional commissioners, district directors, service center directors, and other field officials have recently been instructed that their memoranda and circulars are not to be classified as "Official Use Only" unless they contain material the same as, or similar to, material so classified in either the IRS Manual or the ADP Handbooks issued by our National Office. A copy of these instructions, with the applicable section underlined, is enclosed.

As you will recall from our testimony, all material in the IRS Manual and ADP Handbooks will be available to the public unless its release would seriously impede the exercise of our law enforcement responsibilities. In applying this criterion, if certain segments of the material that is not released include statements which either create or determine the extent of substantive rights and liabilities of persons affected, such material also will be made available to the public.

We are in the process of transferring from the IR Manual to our Law Enforcement Manuals the material which would seriously impede the exercise of our law enforcement responsibilities if disclosed to the public. Our ADP Handbooks, however, require a different system for making as much material as possible available to the public. They contain detailed step-by-step procedures and instructions for processing tax returns in the service centers and, of course, contain the many enforcement tolerances necessary to handle that workload efficiently and economically. For those Handbooks, transfer of the law enforcement material to a Law Enforcement Manual so that two sources of step-by-step procedures and instructions would have to be consulted simultaneously and would greatly impede the processing of tax returns. Therefore, we are exploring the feasibility of making available to the public an edited set of ADP Handbooks

from which there will have been deleted only those items which would seriously impede the exercise of our law enforcement responsibilities if disclosed to the public. We will advise you of the final system adopted to make the ADP Handbook material available to the public.

With best wishes,

Sincerely,

DONALD C. ALEXANDER,  
*Commissioner.*

Enclosure.

## MANUAL TRANSMITTAL, INTERNAL REVENUE SERVICE

*August 30, 1974.*

### PURPOSE

This transmits revised text for IRM 1260, Administrative Classification of Official Publications and Documents Intended for Internal Use.

### REMOVAL AND INSERTION OF PAGES

Remove: Text 1260—1267.

Insert: Text 1260—1267.

### NATURE OF CHANGES

IRM 1262:(1) updates administrative classification authority by citing Treasury Department Order No. 222.

IRM 1264 reflects the latest revision of Delegation Order No. 89 by updating the list of officials authorized to classify material "Official Use Only." Also included is the authority for declassification of "Official Use Only" material, and the restriction on redelegation of the authorities.

IRM 1265 revises the guidelines for classifying internal management documents.

### EFFECTS ON OTHER DOCUMENTS

Manual Supplement 12G-53 (Rev. 1), dated July 17, 1970, is superseded *in part* with respect to IRM 1260. This "effect" should be annotated by pen and ink on the Supplement cited, with a reference to this Transmittal. Manual Supplement 12G-81, dated August 22, 1973, is superseded.

Manual Transmittal 1200-20, dated February 28, 1963, is obsolete.

WILLIE E. WILLIAMS,  
*Deputy Commissioner.*

## 1260 ADMINISTRATIVE CLASSIFICATION OF OFFICIAL PUBLICATIONS AND DOCUMENTS INTENDED FOR INTERNAL USE

### 1261 SCOPE

(1) This section sets forth the authority and guidelines for administrative classification of official publications and documents intended for internal use.

(2) The authority and guidelines for disclosing the contents of and furnishing official publications to persons outside the Department of the Treasury are set forth in IRM 1240.

### 1262 AUTHORITY FOR ADMINISTRATIVE CLASSIFICATION

(1) Treasury Department Order No. 222 provides authority for the administrative classification of certain non-defense official information which requires confidential handling and which is not subject to classification safeguards or dissemination restrictions imposed by law or by Executive Order No. 10501 (as amended), titled, **Safeguarding Official Information in the Interest of the Defense of the United States.**

(2) The authority for administrative classification contained in the Treasury Order pertains to all documents, reports, memorandums and publications intended for internal use containing information of the types specified in the

Order. However, only publications intended for internal use (see IRM 1240 for examples) and documents addressed to officials of the Department of the Treasury for signature by the Commissioner or Deputy Commissioner will be subject to administrative classification. The limited distribution of other documents, reports of investigation, memorandums and correspondence, and the normal safeguarding of Service files to prevent unauthorized disclosures, make administrative classification unnecessary.

#### 1263 CLASSIFICATION CATEGORIES

(1) Publications intended for internal use and documents addressed to officials of the Department of the Treasury for signature by the Commissioner or Deputy Commissioner containing non-defense information or material of an important, delicate, or sensitive nature which should be treated confidentially and restricted to the officials and their immediate subordinates who need to know such information, shall have "Limited Official Use" imprinted on the bottom of each page. Publications and documents so marked shall be handled and transmitted in a manner equivalent to that prescribed for "Confidential" defense information in Executive Order 10501. It is not required, however, that persons permitted access to "Limited Official use" information have a "Confidential" defense information clearance.

(2) Publications intended for internal use containing non-defense information or materials which should be safeguarded but to a lesser degree than "Limited Official Use," and which have wider distribution than "Limited Official Use," shall have "Official Use Only" imprinted on the bottom of each page. Publications so marked shall be restricted to official use and handled or transmitted in a manner which will not make them available to persons outside the Department of the Treasury except as provided in IRM 1240.

#### 1264 AUTHORITY TO ADMINISTRATIVELY CLASSIFY PUBLICATIONS AND DOCUMENTS

(1) Publications and documents shall be classified for "Limited Official Use" by the Commissioner or Deputy Commissioner.

(2) In the National Office, publications shall be classified for "Official Use Only" by the Commissioner; the Deputy Commissioner; Assistant Commissioners; Assistant to the Commissioner (Public Affairs); Director Tax Administration Advisory Staff; Division Directors; Assistant and Associate Division Directors; the Director of International Operations; and the Chief, Disclosure Staff, as provided for in Delegation Order No. 89 (as revised), in accordance with guidelines set forth in IRM 1265.

(3) In the Regions, Districts and Service Centers, publications shall be classified for "Official Use Only" by Regional Commissioners; Regional Inspectors; Assistant Regional Commissioners; District Director; Service Center Directors; Director, IRS Data Center; and Director, National Computer Center, as provided for in Delegation Order No. 89 (as revised), in accordance with the guidelines set forth in IRM 1265.

(4) The authority to declassify publications classified under Delegation Order No. 89 (as revised) may be exercised by the official authorizing the original classification, a successor in that capacity, or a line supervisory official of either. Classification and declassification authorities may not be redelegated.

(5) The originator of a publication or document of the type subject to administrative classification under the provisions of IRM 1262:(2) has the responsibility for recommending the administrative classification, if any, in accordance with the guidelines set forth in IRM 1265.

#### 1265 GUIDELINES FOR ADMINISTRATIVE CLASSIFICATION

##### 1256.1 INTERNAL MANAGEMENT DOCUMENTS

(1) Internal management documents (see IRM 1230) constitute specific categories of publications issued by the National Office, Regions, Districts, and Service Centers. Officials authorized to issue internal management documents will observe the following guidelines:

(a) The wide distribution necessary for internal management documents makes it impracticable to afford them the security handling required for "Limited Official Use." Therefore, internal management documents should

never contain information requiring an administrative classification higher than "Official Use Only."

(b) All Policy Statements will be classified "Official Use Only."

(c) Only those Manual Supplements issued to "Official Use Only" classified Internal Revenue Manual Handbooks will be classified "Official Use Only."

(d) The basic text and Handbooks of the IR Manual will be classified "Official Use Only" with the exception of Part Zero, Part VI, Chapter 1100 and those Chapters and Handbooks specifically declassified by Manual Transmittals (Chapters or Handbooks for which a Manual Transmittal has been issued making the material available to the public are *not* classified "Official Use Only" even though some of the pages will carry that classification.)

(e) Information Notices will be classified "Official Use Only" only if they contain material the same as, or similar to, that contained in the IR Manual and ADP Handbook material classified "Official Use Only."

(f) Delegation Orders, including the separate series of RC-, DIR-, SC-, and IO-Delegation Orders authorized IRM 1230, will not be classified.

(g) RC-, DIR-, SC-, and IO-Memorandums and Circulars will be classified "Official Use Only" only if they contain material the same as, or similar to, that contained in the IR Manual and ADP Handbook material classified "Official Use Only."

(h) The series of ADP Handbooks will be classified "Official Use Only," with the exception of those specifically declassified by ADP Handbook Transmittals. (Handbooks, Chapters or Issuances for which a Transmittal has been issued making the material available to the public are *not* classified "Official Use Only" even though some of the pages still carry that classification.)

(i) Only those ADP Handbook Supplements issued solely to "Official Use Only" classified ADP Handbooks will be classified "Official Use Only."

#### 1265.2 OTHER INTERNAL-USE PUBLICATIONS

Internal-use publications other than internal management documents, containing information which should not be disclosed outside the Department of the Treasury, shall be classified "Official Use Only" unless the classification "Limited Official Use" is believed necessary by the issuing official. In that event, the proposed publication will be forwarded through normal supervisory channels to the Deputy Commissioner, with a memorandum explaining the reasons for requesting the higher classification.

#### 1266 PREPARATION OF INTERNAL-USE PUBLICATIONS FOR PRINTING OR REPRODUCTION

(1) Proposed internal-use publications intended for printing or reproduction without retyping will show the administrative classification, if any, on each page of the publication.

(2) Proposed internal-use publications requiring retyping as part of the printing or reproduction process will show the administrative classification, if any, on the first page of the publication. The classification will be carried forward to each page of the publication in the printing or reproduction process.

#### 1267 EFFECT OF PRIOR CLASSIFICATION, "FOR OFFICIAL IRS USE ONLY," ON EXISTING PUBLICATIONS

This classification on existing publications shall be considered to have the same effect as "Official Use Only." Upon revision or reprinting, "For Official IRS Use Only" shall be deleted and consideration given to proper administrative classification in accordance with the requirements of this Section.

#### KEEPING FIELD OFFICES INFORMED

Senator KENNEDY. Further down on that paragraph 3 you have "the quick issuance of manual transmittals are being used to keep field offices completely and currently informed as to which documents have been released."

I am sure you probably know that Longs noted at our hearings that they had problems obtaining access to regional and district records that corresponded with published IRS sections.

Could you comment on this problem and what you proposed to do to eliminate it?

Mr. GIBB. On the transmittals, yes; the manual transmittal program is a continuing program, it has been underway. We did furnish Mr. Susman a copy of a sample transmittal. The official use only classification is being removed on a chapter-by-chapter basis. As each chapter is declassified the transmittal is issued notifying the field that they may release that material in their offices and a substantial amount of the material has been declassified. The official use only legend still appears or may appear until the document is reprinted as opposed to being hand struck out, for example. But none the less the field is notified they may release that material and this has been the procedure by which it is done.

Senator KENNEDY. What about the regional district directors?

Mr. GIBB. At this point in time, Mr. Chairman, the instructions have not been released. Instructions are in process currently to give the field people the authority to declassify their materials using the same criteria that we use in the national office of the manuals.

Senator KENNEDY. They will be made public, too?

Mr. GIBB. Yes.

Senator KENNEDY. Can you give us any idea when that will be done?

Mr. GIBB. The document is in review now but we don't have a specific target date.

Senator KENNEDY. Is this one of those things that are going to be on the agenda for next week, or one of those that is going—

Mr. GIBB. I think we will give it every deliberate consideration.

Senator KENNEDY. You will let us know when you are going to. We are interested in it, and if you could keep us abreast of it periodically.

Mr. GIBB. Yes, sir.

#### NO QUOTA SYSTEM IN IRS

Senator KENNEDY. Could we move toward the issue of statistics. Perhaps you could give us a brief summary as to what is happening.

Mr. ALEXANDER. I will tell you where we stand now, Mr. Chairman.

Senator KENNEDY. That is pages 7 and 8.

Mr. ALEXANDER. Described on page 7 and page 8. And I would like to add some additional thoughts to those on pages 7 and 8.

This again is wound up in a larger problem, a problem of management of the Internal Revenue Service and a problem of preventing there being any implication by any of our procedures or processes that we have something that we don't have; namely, a quota system. We don't have one. We are not about to have one and we are not about to indicate to our field people or to others that we have one by getting so wound up in statistics that we manage by statistics not realizing that we are a large group of people. Internal Revenue Service set about last year to look at each of its reports and its publications to find out whether it was really necessary for the current management and forward planning of the Service. If it was not we eliminated it and we propose to keep this program, and we have saved the taxpayers of this country a large sum of money by doing this.

## RELEASE OF STATISTICS

In connection with this, we considered the release of statistics to the public, and I want to take the blame for going slow in this area. We now have under consideration at the Department of Justice, with their committee having overall responsibility for freedom of information, the extent to which as statistics are properly protectable under the Freedom of Information Act, the extent to which they should be released and the extent to which they should be held confidential.

I can't commit this committee as to a time when they will make their decision, but I can say that we will abide by it and this problem should be resolved, I hope, in the near future.

Now, some have expressed dismay because we don't continue publication of statistics that we consider not only unnecessary but inadvisable. I am sorry about their dismay but I don't think that we should manage the Internal Revenue Service in an effort to produce statistics for those who may want them for one reason or another. I think we should manage the Internal Revenue Service to try to do the job assigned to use and to try to fulfill all of our responsibilities under the Freedom of Information Act as well as those under the Internal Revenue Code.

Senator KENNEDY. Well, when will the Justice Department finish with its study, do you have any idea?

Mr. ALEXANDER. I don't know, perhaps Mr. Whitaker has a better idea.

Mr. FLANAGAN. I have no idea when we will finish. We have to update our submissions. They are now waiting for them.

Senator KENNEDY. Update on your what?

Mr. FLANAGAN. Updating the submission we gave them. We hope to get the submission to them in the very near future. How long it will take after that I don't know.

Mr. WILLSEY. We have set an internal time limit that the material will all be submitted to the Justice Department by August 5. We would hope that we would have a meeting immediately thereafter with the Freedom of Information Act Committee at the Justice Department. We intend to abide by their decision whichever way it cuts as to what portion of the statistics should be released and which portion of that are appropriately safeguarded under the Freedom of Information Act.

Senator KENNEDY. Obviously the importance of the collection of the statistics has broad implications. I would expect, to how the Internal Revenue Service is going to devote its resources or energies, and how well it is doing its job.

## BALANCE BETWEEN CONFIDENTIALITY AND PUBLIC RELEASE

Mr. ALEXANDER. How well it is doing its job, how effectively it is doing its job, how comprehensively it is doing its job. Some statistics are important and certainly the public has a right to know. Certainly the public has a right not to be misled. It is again a matter of striking a balance between that which should be held confidential and that which should be released. We are engaged in this project now and we

hope and expect this will be completed very soon. We will keep this committee advised.

Senator KENNEDY. Well, I hope we can get that at the earliest possible time. I think it is certainly in the public interest that that type of information is available to it.

I realize OMB is concerned with undue publications of materials, but there is a question, I think, about the coincidence between the disclosure of IRS reports and statistics, and the discontinuance of other of their publications. I am referring to the audit story, the register of IRS study Quarterly Review of technical project or technical guidance level, and I think the important point is that if these were duplicates, the public should know what documents they duplicate. I think this applies to the audit story which generated a substantial amount of information and public interest when publicly released.

I am just wondering what reaction you have to that observation.

#### IRS NOT MANAGED BY STATISTICS

Mr. ALEXANDER. In point of time, Mr. Chairman, there is indeed a coincidence. In point of fact, the coincidence disappears.

In point of fact, I am completely aware of the responsibility of the Internal Revenue Service to administer the law fairly, to construe the law fairly and reasonably irrespective of the effect of that administration and that construction on the revenues as a whole and the obligations of these particular taxpayers. We have a special duty to be fair and to be reasonable and to be equitable and that duty is inconsistent with management of Internal Revenue by statistics. I don't propose to manage it by statistics. One of the ways to prevent management by statistics and at the same time comply with the OMB directive and comply with our obligation to be as lean an agency as we can, is to curtail paper pushing and curtail numbers for the sake of numbers and curtail numbers which can be misconstrued by our own people as implying some sort of goal—if you didn't pick up your \$400 this morning you are not doing your job—that sort of thing which is absolutely improper for the Internal Revenue Service.

Now, my concern about numbers, about numbers being little gods unto themselves, has manifested itself in the elimination of much in the way of these numbers, and if there are those who in their study of the Internal Revenue Service, whatever the reasons for the study, are concerned about this, I think that their concerns are far outbalanced by the concerns of the taxpayers as a whole who want us to be effective but want us to be fair.

Mr. WILLSEY. With respect to one of the specific items you mentioned, the audit story, part of the basic statistical data from which the audit story materials were drawn is now part of the package that is pending at the Justice Department. Pending resolution of this issue with the Freedom of Information Act Committee we will make decisions one way or the other on the release of those statistics.

#### LONG'S CALCULATIONS BASED ON UNRELATED DATA

Senator KENNEDY. You are aware of some of the testimony that the Longs have made about an IRS taxpayer compliance measurement

program that indicated that had all returns filed been audited the previous years almost half, they said, 48 percent, would have failed IRS standards.

Mr. ALEXANDER. We are aware of that testimony and Miss Alpern can comment on it.

Miss ALPERN. Mr. Chairman, as a general proposition, I find erroneous the Long's interpretation of the statistics that they received. Generally, what they have done is to take raw data that appeared in one table that was a part of, and only a part of, a sample design for the taxpayer compliance measurement program, used total population for that audit class from an entirely different year, and from an entirely different source, multiplied these two sets of figures and came up with certain deductions. The conclusions they arrived at are not the results that we find in our own surveys.

Senator KENNEDY. What would your figures be, can you tell us?

Mr. ALEXANDER. Far less.

Miss ALPERN. I don't know. Far less.

Senator KENNEDY. In the 40 percent?

Miss ALPERN. No.

Senator KENNEDY. Thirty percent?

Mr. ALEXANDER. It would be far less.

Miss ALPERN. Not more than 10 percent in dollar terms, I would estimate.

Senator KENNEDY. What does that translate into dollars?

Miss ALPERN. I really don't know.

Mr. WILLSEY. That is another erroneous assumption the Longs have made.

Senator KENNEDY. Erroneous assumption?

Mr. WILLSEY. The translation that the number of returns that are in error can be translated into dollars of errors on those returns. That kind of translation is just meaningless.

Miss ALPERN. I can't even relate to their figures because as I indicated they are using different tables from different years. One of the tables that they used, for example, was for fiscal year 1973. They multiplied that by the total population of an audit class, say corporations of over \$100,000, for fiscal year 1972, because that was the only data they had. These are nonrelatable. The resulting figure was erroneous and, incidentally, that is how in their testimony the Longs came up with an equally erroneous figure of a \$23 billion gap from one of the surveys.

Mr. ALEXANDER. The figure doesn't translate.

#### TCMP DATA

Senator KENNEDY. Of course, you have that information prepared in a document which is for official use only. We have received that document in confidence, and will obviously respect that, but the answers to many of the allegations and charges have actually been prepared and are included, as I understand, in those summary results. But the thing I am wondering, given the kind of public confusion about this particular interest, is why that information shouldn't be available to the public.



Mr. ALEXANDER. Mr. Chairman, this is under consideration now with the Department of Justice.

Mr. WILLSEY. That is part of our package.

Mr. ALEXANDER. First, we need to find out to what extent are materials like the one that you mentioned are protected, are not protected under the act. Then we need to reach the second determination of our two-prong requirement, which is even though the material is protectable, to what extent in the sound administration of tax laws should it be released. So the initial problem is the one that is now under consideration, the one that we will advise this committee about when this consideration has been completed. We hope that will be soon.

#### BASIS OF AUDIT SELECTIONS

Senator KENNEDY. Well, I have just had a chance to review this briefly and it doesn't appear that there is any particular road map towards tax evasion in this manual. I hope that your recommendations to the Treasury will be followed. Let me just mention one further area and then we will move on: the Longs said that there were IRS agents, to audit all individuals reporting between \$10,000 and \$50,000 incomes, chiefly from wages and salaries, the percentage of returns that would be approved as filed varied from 77 percent reported by IRS agents assigned to the Providence, W. Va., district, to only 20 percent reported by agents assigned to the Buffalo, N.Y., area.

Now, whether those statistics are 77 or whatever, the disparity is, of course, the extraordinary statement. Do you find that again these statistics are inaccurate?

Second, do disparities of this dimension exist and what is the significance of such disparities?

#### STATISTICS ACCURATE—DEDUCTION ERRONEOUS

Mr. ALEXANDER. As to the first question, I will ask Miss Alpern if she has any comments and I would like to discuss the second and third.

Miss ALPERN. Their compilation in the example you cited, Mr. Chairman, is accurate statistically. Their deduction is erroneous, for this reason: what they are assuming is that there is a uniform base of cases selected. For example, they assume that every case, let us say, in West Virginia, is like every case selected elsewhere—in Ohio, let us say. This is not so. The audit selection of returns that comes out of the computer is based upon nationwide surveys, which do not reflect differing conditions from district to district. Therefore, there should be different audit results because the nationwide sample which determines computer selection of returns for audit does not reflect differences not based upon taxpayer characteristics or local conditions that exist. So the disparities should be there.

Mr. ALEXANDER. I think you have covered all three points because I would just like to add that if indeed this particular statistic were uniform throughout the country then Internal Revenue would not be doing its job correctly because pretty clearly we would be, insisting upon a norm, upon a uniform test that would mean those below would have to be raised above. How would you do it? You would do it by misapplying the law. Of course, there are differences in economic condi-

tions and in taxpayer conditions in this country. There will continue to be differences, and it is up to us to manage our resources effectively but not manage them so as to try to create a uniformity which can only be created by mismanagement.

Senator KENNEDY. Well, why shouldn't the public know whether people in the business community pay more in terms of their taxes, than people in another aspect of our economy, the workers. Rural communities pay more than urban areas. Just in terms of public information about statistics, why shouldn't we know that, lawyers pay more, certain professions pay more, doctors, whatever the case may be.

Why shouldn't that be available?

Mr. ALEXANDER. This is part of the overall problem that we are pursuing, Mr. Chairman, and we are concerned about the beginning of the process as well as the end of the process. Perhaps we are overly concerned about it and perhaps our concerns about the beginning of the process will be eliminated by a finding by the Department of Justice Committee that statistics which involve the beginning of the process are indeed not protectable. That indeed will be the end of it if there is such a finding. But maybe as an agency we are mindful of the resources we have as compared with the job we have. We have increased our resources and we have increased our audit coverage and we made 300,000 more audits last year than we did the year before. But as Mr. Whitaker pointed out, we can't audit everyone. We think that in balancing our responsibilities to disclose and our responsibilities to administer the laws, the beginning of the process is important and the matters that you referred to go to the allocation of resources at the beginning of the process.

Now, this concern like our other concerns is subject to reconsideration and you can be sure that we will give it further thought. This is the second prong of the two-pronged problem that I mentioned in connection with the statistics.

First is whether they are protectable at all and second, even if protectable should they be protected?

Senator KENNEDY. I agree with you. I don't understand how they are protected myself.

#### TAXPAYER CLASS DATA

Mr. ALEXANDER. Now, the question, by the way, specifically as to taxes by classes of taxpayers along the lines you described, by occupation, we publish a great deal of data to this very effect in the statistics-of-income series and we will be glad to supply that for the record to show you what we give to the public.

[The material referred to follows:]

#### STATISTICS OF INCOME SERIES

*Statistics of Income—Business Income Tax Returns.*—Provides annual statistics derived from proprietorship and partnership tax returns on the self-employment income and expenses of farmers, businessmen, doctors, lawyers, and other professionals.

*Statistics of Income—Corporation Income Tax Returns.*—Annual estimates classified by industry and size of assets, liabilities, receipts, deductions, profits, income tax liability, tax credits, and distributions to stockholders, and computation of the corporate tax base.

*Statistics of Income—Individual Income Tax Returns.*—Provides annual estimates of taxpayers income, exemptions, standard and itemized deductions, tax refunds, tax due, and total tax liability. The data are classified according to adjusted gross income size, marital status, tax rates, States, and, biennially, by standard metropolitan statistical areas.

*Statistics of Income—Local Area Data.*—Provides biennial statistics on number of returns filed, exemptions, income, and tax liability, classified by size of income for each county and, in the past, for each of the 38,000 postal ZIP code areas.

*Statistics of Income—Depletion Allowances.*—Provides statistics on depletion allowances and income and expenditures for various minerals and statutory percentage depletion rates by industries and foreign and domestic properties.

*Statistics of Income—Corporate Foreign Income and Taxes.*—Provides statistics on the foreign operations of United States corporations. The country and geographic area.

*Statistics of Income—Domestic International Sales Corporations DISC.*—A new report will provide statistics on the operation of the DISC legislation. Data will be shown for export receipts by industry product and country of ultimate destination.

*Statistics of Income—Fiduciary Income Tax Returns.*—Provides estimates of total income and its composition, deductions, taxable estate, and tax for personal trusts with income \$600 or more according to type of trust, size of total income, and tax rate.

*Statistics of Income—Estate Tax Returns.*—Provides estimates of gross estate by types of property, deductions, taxable estate, and tax for decedents with gross estate in excess of \$60,000 by size of estate, tax rate, and State.

*Statistics of Income Personal—Wealth Estimated from Estate Tax Returns.*—Provides estimates of the number and wealth of persons with assets of more than \$60,000 by age, sex, marital status, as well as various measures of gross and net wealth.

*Statistics of Income—Sales of Capital Assets Reported on Individual Income Tax Returns.*—Provides estimates of capital gains transactions by type of property, gross sales price, basis of property and expense of sale, and net gain or loss reported on individual income tax returns with sales of capital assets.

*Statistics of Income—Returns of Private Foundations Exempt from Income Tax.*—Provides estimates of the receipts, expenditures, net income, assets and liabilities of organizations classified as private foundations.

*Statistics of Income—Farmers' Cooperative Income Tax Returns.*—Provides estimates of the receipts, deductions, net income, tax, assets and liabilities for both exempt and nonexempt farmers' marketing and purchasing cooperatives according to type of service and commodity marketed, and State.

*Statistics of Income—Returns of Employees' Pension Plans and Pension Trusts.*—Provides estimates of the receipts, disbursements, assets and liabilities of individuals or organizations who maintain employees' pension plans or pension trusts. Type of entity, type of plan, method of funding, and number of employees are also estimated covered and non-covered.

*Statistics of Income—Returns of Organizations Exempt from Income Tax.*—Provides estimates of the receipts, expenditures, assets and liabilities of organizations (other than private foundations) exempt from income tax. Important classifications include the subsection of the Internal Revenue Code under which exempt and the principal business activity.

Senator KENNEDY. On the other question about national norms and geographical distribution, of course, in compliance program, review of southwest region, reading on page 24, "achievements and significant accomplishments under field audits for several years southwest statistical accomplishments and field audit have been poor in comparison to U.S. averages." Then you go down into the various details comparing other different sections of the country, and then you do it for various other aspects of the program. It is not a public document, but it does show that you people are interested in these kinds of disparities, and these disparities do exist, according to this, which isn't a public document but rather dramatic in form.

Mr. ALEXANDER. That is not a public document, at least most of it isn't.

Senator KENNEDY. I am not going to do anything with it.

Mr. ALEXANDER. I hope it will remain not public until we get these two threshold questions resolved. I do appreciate your concern, Mr. Chairman, and believe me Internal Revenue is grateful for this opportunity to exchange views with you on this very important subject.

#### SHIFT OF IRS ACTIVITIES TO JUSTICE DEPARTMENT

Senator KENNEDY. Now, the Treasury Department has a number of law enforcement and investigative capabilities, overlapping with some of those of the IRS, and there have been some suggestions that such activities ought to be concentrated in the Justice Department. What would be your personal attitude about that?

Mr. ALEXANDER. I certainly hope not. I didn't become Commissioner of Internal Revenue with the intent to preside over the liquidation of the Internal Revenue Service.

Senator KENNEDY. From a management point of view?

Mr. ALEXANDER. From a management point of view I think that the Internal Revenue Service should be lodged elsewhere although I respect and admire my friends across the street in the Justice Department and Federal Bureau of Investigation. I suppose some questions can be raised about having the investigators and the lawyers under the same roof, although Mr. Whitaker and I get along pretty well under the same roof.

I would see little advantage and many disadvantages in shifting the Internal Revenue to the Department of Justice, which to say the least has quite enough these days for it to handle.

Senator KENNEDY. You are not aware of any plan to do so, either within the Justice Department or—

Mr. ALEXANDER. I have heard rumors about some sort of suggestion but I have surely seen no signs of that on the part of our friends in the Justice Department or elsewhere. I think that it would be a long step in the wrong direction.

#### DELAY IN ANSWERING FOI REQUESTS

Senator KENNEDY. Just finally, I am sure you are aware of our interest in delays and the charges in the Freedom of Information requests. We have outlined in that new legislation which passed the Senate, the House, and is now in conference, some specific time frames for response both for the initial request as well as for various appeals.

I am not going to go over now some of the specific cases, but this is an important area of concern. We have gotten a number of examples of people, many in this town that have waited an extraordinary amount of time to get various requests, not only the Longs themselves.

Just in one particular case last month, Mr. Leon Irish, who is an attorney, indicated a case history reflecting initial request on April 25, 1973, followup request letter of September 25, 1973, denial on November 1, 1973, and appeal November 10, 1973, followup appeal letter of February 15, 1974, and response from IRS June 17, saying that the Service "must first examine the records to make sure that the infor-

mation may be disclosed." That is 13½ months later and he still hasn't any further response.

Then Mr. Brandon, who filed suit last week, after going over 9 months with no reply to his request for information. These are instances. I would appreciate your following up on those particular situations, since they have been brought to our attention. There certainly should be a greater sense of urgency about responding to requests and fulfilling the requirements of the new law, which gives ten days for responding to requests initially and 20 days for appeals. This is something which I think is extremely important, and something we hope you will move on the way you have been moving in many of these other areas.

MR. ALEXANDER. Mr. Chairman, we will look into these two matters you mentioned. I am familiar with Mr. Brandon's request and we will supplement the submission we have already made on this important issue.

Senator KENNEDY. OK.

[The following was subsequently submitted by the Commissioner for the record:]

#### IRISH AND BRANDON CASES

Mr. Irish's request pertained to the Special Agent's Handbook, which included exempt law enforcement materials. Preparation of a response necessitated the careful review of several hundred pages of text, coordination with the Department of Justice's Freedom of Information Committee, and detailed editing of the materials to be provided. We expect to make a response to Mr. Irish very shortly.

Mr. Brandon requested very extensive statistical reports, many of which are similar to those being considered by the Department of Justice's Freedom of Information Committee. As stated at the hearing, we hope to learn the Committee's views shortly. We will make a final response to Mr. Brandon as soon thereafter as possible.

Senator KENNEDY. We want to thank you, Mr. Commissioner, for coming up. I think you have indicated to us your desire to carry forward the spirit of the Freedom of Information Act, and have outlined for us this morning a number of procedures which you feel will be helpful in preserving the integrity of the office, its relationship with the White House, and the Congress. Quite clearly from your responses here, you have indicated that there are certain statutory changes that are underway, that you are taking various administrative steps within the department to insure as complete an amount of public disclosure as possible in terms of certain classes of rulings, and that you are prepared to carry forward on the mandates of the Freedom of Information Act in terms of response within the period of time which has been outlined in the legislation and the appeal I just want to say that we appreciate the efforts that are being made in this direction. There are still other issues and questions regarding what we are going to do about the statistics, manual rulings, and the regional directive, and some of these other questions which we went over briefly this morning. We are going to follow up on those and we are hopeful we can make progress on these areas. We want to commend you on this constructive effort and look forward to working with you to make future progress in these other areas. We want to thank you and your group very much for coming.

Mr. ALEXANDER. Thank you very much, Senator Kennedy. We have appreciated the opportunity to appear before you on this matter and we will keep your committee advised.

[The following statement by Mr. Lester Bridgeman was submitted for the record:]

#### STATEMENT OF LESTER M. BRIDGEMAN

The following comments are submitted, at the invitation of the Chairman of the Subcommittee on Administrative Practice and Procedure, with respect to the Internal Revenue Service's implementation of the Freedom of Information Act.

I am a member of the firm of Bridgeman & Pyeatt in Washington, D.C.; have been a member of the District of Columbia Bar for 22 years and have, over the course of the past 11 years, represented Mr. Bart B. Chamberlain, Jr. of Mobile, Alabama, and companies in which he is involved, in litigation in various courts.

My experiences with respect to IRS practices in the field of Freedom of Information Act litigation have been as one of counsel for Mr. Chamberlain, as Plaintiff, in a suit now pending against the Commissioner of Internal Revenue, the Internal Revenue Service, and certain officers and employees of IRS, in the United States District Court for the Southern District of Alabama in *Chamberlain v. Alexander, et al.*, CA No. 7742-73P. Since that litigation is still pending I will attempt to describe those experiences by drawing basically on the public records in the Court while attempting to avoid drawing conclusions for your Subcommittee with respect to matters still pending in the litigation.

It is both possible and permissible, however, initially to draw two conclusions that are, I think, of material interest to your Subcommittee:

1. Our experience, which apparently conforms to that of others in litigation with the IRS, is that the Internal Revenue Service will energetically seek to thwart the statutory injunction that FOI Act litigation shall "take precedence . . . over all other causes and . . . be assigned for hearing and trial at the earliest practicable date and expedited in every way." It appears to be IRS policy to bar revelation of any records that it has not itself previously chosen to make public, without regard to their relationship to statutory exemptions. For example, 16 months after our original administrative request for information, we still have none of the essential documents we seek, nor do we have a court decision on the merits of our FOI Act request.

That situation results simply from the failure of the IRS to permit the matter to reach a posture in which the Court may decide; from the failure and refusal of IRS (1) clearly to identify individual documents and their content; (2) to relate specific documents or parts thereof to specific related exemptions; (3) to provide a consistent statement of the asserted grounds for failure to produce documents. IRS tends generally to hinder, rather than aid, judicial comprehension of the issues presented, and to delay production of any documents so far as possible. IRS foot-dragging has been such that after more than a year of active pretrial litigation, they ultimately produced for our inspection and copying several hundred pages of documents the production of which they had never expressly opposed at any stage of the litigation. They had simply refrained from revealing its existence or nature.

2. No person of low or moderate income and no organization of moderate means, without the assistance of counsel who is willing and able to provide free service, can hope to survive in FOIA litigation against the IRS. Our client fortunately has both the will and the finances actively and energetically to litigate against the IRS as we have done. Absent independent financial means his efforts to obtain records from the IRS would long since have been unsuccessfully terminated.

A short procedural history of the Chamberlain litigation may provide some basis for those conclusions:

That litigation arose principally out of Mr. Chamberlain's efforts to obtain information respecting, principally, possible IRS activities in the areas of unlawful electronic eavesdropping, discrimination against political campaign con-

tributors, and use of fraud claims against taxpayers as a device to toll the otherwise applicable statute of limitations in those instances where the IRS had previously negligently permitted the statute to run.

The IRS had in fact permitted the statute of limitations to run on Mr. Chamberlain's tax returns for 1966, and a civil fraud action was then instituted against him which would, of course, have the effect of reopening the 1966 tax year. The question of that tax liability remains pending before the IRS.

Mr. Chamberlain had originally submitted some 15 requests under the Freedom of Information Act to the District Director of the Internal Revenue in Birmingham, Alabama on February 5, 1973. Those requests were designed to elicit information that would be pertinent both to his tax dispute with the Internal Revenue Service and to any questions of more general public interest respecting the practices of the Internal Revenue Service. Mr. Chamberlain then supposed of course that the statutory injunction that "each agency, on request for identifiable documents . . . shall make the records promptly available to any person" would be complied with. His assumption was incorrect.

When, after 2½ months there had been no response from the District Director, an appeal was filed with the National Office pursuant to the provisions of the pertinent IRS Regulations. That appeal brought a prompt denial of the major portion of Chamberlain's requests. On June 6, 1973, that decision was affirmed by the Commissioner after an administrative appeal by Chamberlain.<sup>1</sup>

The Defendants' Answer to the Complaint, filed 2 months later, refused any production on the principal stated basis that

"... the agency records sought by the Plaintiff which are identifiable and known to exist are exempt from disclosure under one or more of" the exemption provisions set out in Sections 552(b)(2)-(7) and (9) of the statute.

During the interim between the filing of our Complaint and the submission of Defendants' Answer, the United States Court of Appeals for the District of Columbia Circuit had published its decision in *Vaughn v. Rosen*, — App. D.C. —, 484 F.2d 820 (D.C. Cir. 1973). That opinion dealt with the procedural problems created for Courts and Plaintiffs in FOI Act cases by the kind of broad brush responses typified by Defendants' highly generalized Answer in the *Chamberlain* case; a technique that is apparently standard IRS practice in suits under the Freedom of Information Act. The Court in *Vaughn* denounced that practice and defined in detail the burden that Government officers and agencies must bear in seeking to avoid disclosure of information. The Court said there,

"Under existing procedures the Government claims all it need do to fulfill its burden [under the FOIA] is to aver that the factual nature of the information is such that it falls under one of the exemptions. At this point the opposing party is comparatively helpless to controvert this characterization. . . . It is vital that some practice be formulated that will (1) assure that a party's right to information is not submerged beneath Governmental obfuscation and mischaracterization, and (2) permit the Court system effectively and efficiently to evaluate the factual nature of disputed information." 44 FS. 2d at 826.

The Court required, to remedy that problem, "detailed justification" with respect to each assertedly exempt document or part thereof with "specificity, separation and indexing" by the Government assuring the Plaintiff of an "adequate adversary testing" of each Government claim to exemption with respect to each such document or part.

In light of the *Vaughn* decision and of our information respecting past practices of the IRS in Freedom of Information Act cases,<sup>2</sup> we served interrogatories on Commissioner Alexander on October 9, 1973. The interrogatories were intended to elicit either (1) a fair description of the individual documents allegedly "exempt" from production and a description of the bases for the claims of exemption or (2) a sufficient identification of the files containing the information in question and the custodians thereof, as well as their location, such as to permit

<sup>1</sup>All of these prelitigation documents are appended to the Complaint in the Chamberlain litigation.

<sup>2</sup>See Appendix A hereto "Internal Revenue Service and the Freedom of Information Act," originally filed as an Appendix to a "Memorandum in Support of Plaintiff's Motion to Compel Discovery and Impose Sanctions" filed February 8, 1974, in *Chamberlain v. Alexander, et al.*, CA No. 7742-73P, USDC SD Ala.

us, by deposition and *subpoena duces tecum*, to identify the files or documents involved with sufficient specificity so as to enable us to request their individual production, and thus to compel the Defendants to discuss the asserted claim for exemption of each such document individually.

Answers or objections to those Interrogatories were due on November 9, 1973. Nevertheless, it was only after we filed a motion with the Court to compel answers in mid-November 1973, and the Court thereafter specified a date for response, that the Defendants submitted their answers almost two months later, on January 3, 1974. Because we believed the few answers then given were substantially incomplete and that Defendants' objections were largely invalid, we immediately moved the Court to compel adequate answers. Chief Judge Pittman handed down an opinion on April 12, 1974, in which he avoided decision on the interrogatory issue in an effort to get to the ultimate material issues at hand; namely what grounds, if any, existed for the Defendant's claimed exemptions. He said there:

"The defendant has merely alleged in general terms that the information or documents sought by the interrogatories come within the exemptions of the Act. He has failed to specify in detail which documents or portions thereof are disclosable and which are within the exemption. The defendant has placed the court in a position where it is impossible for the court to determine which of the documents and information, if any, fall within the exemptions of the Act. Section 552(3) places the burden on the agency to sustain its action in refusing to produce identifiable records.

"The defendant is hereby ORDERED to prepare and file with the Court within twenty-one (21) days from the date of this order a detailed analysis of all documents claimed to be exempt from disclosure in manageable segments which shall not contain factual descriptions, that, if made public, would compromise the secret nature of the information, but could ordinarily be composed without excessive reference to the actual language of the document. . . . It is only after a careful consideration of the analysis of the particular documents in question that the Court can determine whether or not the exemptions claimed by the defendant are well taken."<sup>3</sup>

The Government responded with a memorandum and four supporting affidavits filed within the time authorized by the Court. We then advised the Court, in a document appended hereto as Appendix C, that our review of that "response" convinced us that it was in fact an avoidance of the Court's April 12 Order. We provided the Court with exemplary, but not exhaustive, instances of the deficiencies in the Defendants' response. Those few instances alone, related to over 555 pages of documents about which Defendants totally failed to provide any of the information required by the Court and failed to justify any exemption with respect to any document. We also contended that the Defendants' response was otherwise in violation of the Court's Order.

The Court apparently agreed. It appears that Defendants, too, were conscious of the defects because, the night before the pretrial conference scheduled by the Court for June 6, Defendants delivered to us certain additional affidavits that purported to bolster those earlier filed. Those documents were filed with the Court the following morning.

Nevertheless, after the June 6 pretrial, the Court entered an order referring to the "slowness [with] which the Defendants have responded for a period of one year, including the response filed this date" and said:

"Failure by the Defendants to file a comprehensive response on or before July 8, 1974, will subject them to default judgment, contempt of court, or such other remedies as provided by the law which the Court may deem appropriate. This response is to make a detailed answer to the Plaintiff's reply filed May 22, 1974, wherein objections are specifically enumerated."<sup>4</sup>

On June 6 following the pretrial, the Defendants also produced for us in Mobile several hundreds of pages of materials, over 200 pages of which were simply copies of materials that the IRS had obtained from Mr. Chamberlain's files in prior years, but the production of which they had nevertheless opposed in this case! In addition, many hundreds of pages of the IRS Manual were produced. So far as I have been able to determine, none of those Manual pages had ever

<sup>3</sup> A copy of that order is attached in full text as Appendix B.

<sup>4</sup> Plaintiff's reply filed May 22, 1974, is Appendix C hereto.



been subject to a claim of exemption by Defendants. They had, nevertheless, simply failed to produce those documents, although 16 months had elapsed since the original request of the IRS was made for such information.

Defendants have now submitted additional responses to the Court's Order of July 8. In so doing they conceded, despite the Court's latest Order that, with respect to a large volume of documents, "we have not at this time set forth separate exemption claims as to each individual document."<sup>5</sup> We have filed a preliminary memorandum with the Court outlining the substantial defects in what is now the Defendants' fifth gesture of compliance. We propose to file a more detailed memorandum with the Court on or before August 15. Prior to that time we have set the deposition of one employee of IRS who, we expect, will be able to identify the individual documents encompassed by at least one of the several files the contents of which the IRS has still failed and refused to identify.

Even if we were to assume (as we do not) that the Defendants have now complied with the procedural requirements of the *Vaughn v. Rosen* decision, it has now been 18 months since the original request to the Internal Revenue Service was made; over 13 months since the Complaint was filed in the District Court, and there has not yet been a resolution of the question whether, or to what extent, any of the exemptions claimed by the Defendants is properly applicable in this case.<sup>6</sup>

Certain patterns of conduct have appeared in the course of this case that seem to be consonant with the information that we have on other proceedings involving the Internal Revenue Service in FOIA cases:

1. The substitution of quantity of paper for quality of informative material. For example, on July 8, 1974, in response to the Court's Order of June 6 Defendants produced 26 affidavits totaling 158 pages and purporting to report on factual matters relating to the documents in issue. This appears to be an impressive total in light of the fact that the order of June 6, 1974, directing (again) disclosure by Defendants had been entered only a month before. In fact, however, all but 27 of those 158 pages of affidavits were duplicates entirely or almost entirely of affidavits that had previously been filed with the Court. This produced what we have referred to in our most recent filing with the Court as a "rehash factor" of 82.9%.

2. Failure to submit the required descriptions. Despite the simple requirements of *Vaughn v. Rosen* that every document be identified and described in sufficient detail so as to provide a basis for distinguishing potentially exempt from non-exempt matter, IRS repeatedly failed to do this in the *Chamberlain* case. Its technique is to provide very broad-brush descriptions of entire files of documents or of individual "documents." IRS compounded the problem by impressing upon the term "document" its own peculiar definition: *i.e.*, in their filing with the Court of July 8, they admit that their definition of the term "document" is different from, and much broader than that term as it might ordinarily be used in lay discussion. Their definition of documents in fact admittedly extends to "groups" of documents. Thus, they concede that a single file comprising "145 documents," as they use the term, is in fact composed of undescribed hundreds of documents as that term is ordinarily used. By only generally describing a group of materials designated as a single "document" they then frustrate the dictates of *Vaughn*. Of course they regularly and repeatedly fail even to attempt to relate specific claimed exemptions to specific portions of particular documents.

Moreover, groups of files are given *ad hoc* titles apparently designed to enhance concealment. In *Chamberlain*, a collection of files has been grouped by Defendants under the specially created general heading "Audit Investigatory Files" supposedly to derive the prejudicial benefit of the term "investigatory" as that term is used in Exemption 7 of the statute.

3. The Shell Game—the repeated shifting of the stated legal grounds for exemptions claimed. As this litigation has progressed the Defendants have repeatedly changed the exemptions on which they rely and change the stated grounds on which they rely for the exemption of particular documents or groups of documents. This we have repeatedly referred to in the *Chamberlain* litigation as the

<sup>5</sup> Defendant's Memorandum filed July 8, 1974, at p. 49.

<sup>6</sup> It should be unnecessary to add that the delay discussed above is in no sense the fault of the Court. While the Court has been entirely fair and liberal in allowing both sides ample opportunity to present their positions the Court's orders of April 12 and June 6 make it clear in our opinion that the delay is the result of the Defendants' failure to provide the information essential to an intelligent disposition by the Court.

Defendants' "shell game." For example, the Defendants' July 8, 1974, memorandum relies upon Exemption 7 of the Freedom of Information Act as grounds for non-disclosure of what appears to be the bulk of the documents remaining in issue there. Yet Defendants never mentioned or asserted that exemption as a basis for the administrative refusals to produce the records originally requested. It was first asserted in a perfunctory and non-specific way in Defendants Answer to the Complaint in this case.

Perhaps a more striking example is the reliance of Defendants upon an "exemption" that is not in the statute and which Defendants did not raise until February 8, 1974. That "exemption" is created out of §(a) (2) (C), 5 U.S.C. §552(a) (2) (C) of the FOIA. The claim is that that section exempts so-called "investigative staff manuals," meaning manuals that provide instruction with respect to investigations for law enforcement purposes.

This exemption may be particularly bewildering to the uninitiated because the section of the statute relied upon in fact unequivocally directs that each agency *shall* "make available for public inspection and copying . . . (C) administrative staff manuals and instructions to staff that affect a member of the public." Moreover, the final provision of the FOI Act, Section (c), 5 U.S.C. §552(c) states that "this section does not authorize withholding of information or limit the availability of records to the public *except as specifically stated in this section.*" Nevertheless, the IRS succeeded in convincing the U.S. Court of Appeals for the Sixth Circuit in 1972 in *Hawkes v. Internal Revenue Service*, 467 F.2d 787, that Section (a) (2) (C) by specifically including "administrative staff manuals and instructions to staff that affect a member of the public" implicitly was intended to *exclude* from production staff manuals and instructions to staff pertaining to investigations.

This theory was also accepted by the United States Court of Appeals for the Fifth Circuit in *Stokes v. Brennan*, 476 F. 2d 690 (1973) although we have been able to find no justification in the language or legislative history of the statute for any such interpretation. Admittedly of course both of those cases approached that newly created exemption with caution, limiting it to materials whose revelation would "significantly impede law enforcement," and requiring release of virtually all material that the Government agencies in those cases sought to conceal.

This asserted exemption, never asserted by IRS in this case until Chamberlain's request for records was over a year old, is now relied upon to deny him access to aspects of IRS Manuals. Revelation of those aspects may or may not "significantly impede law enforcement." We are unable to tell because, we contend, the IRS has not, to date, provided us, or the Court, with sufficient information to make an intelligent determination of that issue, even assuming the newly fabricated exemption in fact is proper.

The Court's Orders in the *Chamberlain* case thus far appear to support the conclusion that the ability of the Court to make the determination required by the statute has repeatedly been delayed and impeded by the techniques of the IRS. Reading I have done with respect to other litigation under the FOIA in which the IRS has been involved suggests that these techniques are a product of IRS policy.

These IRS techniques, of course, create very substantial expense to plaintiffs as well as delay; probably ultimately increase the total volume of work required of IRS and Justice Department Tax Division personnel and, perhaps most important, impose a substantial and unnecessary additional burden on the Courts. In the *Chamberlain* case, for example a very substantial amount of the time of the Chief Judge and the Magistrate of the U.S. District Court for the Southern District of Alabama have been taken up repeatedly with issues not essentially related to the merits of the Plaintiff's claim or the Defendants' defenses, but simply with the question whether IRS and other defendants have provided or will be compelled to provide, information sufficient for the Court to make a determination on the merits. I would estimate that Defendants' tactics in *Chamberlain* have, at least, doubled the expenditure of time by the Court that would have been required had there been initial compliance with procedural requirements. I have no doubt that the Plaintiff's costs have more than doubled as a result of Defendants' tactics.

Respectfully submitted,

LESTER M. BRIDGEMAN.

## APPENDIX A

## INTERNAL REVENUE SERVICE AND THE FREEDOM OF INFORMATION ACT

Congress began to consider enacting a freedom of information law about 10 years before the FOIA was enacted.<sup>1</sup> Examples of the opposition of the Treasury Department, which is the parent of the Service, occur throughout this legislative history.<sup>2</sup> This opposition to the FOIA also appears in the hearings in the 89th Congress on S. 1160, which eventually became the Freedom of Information Act.<sup>3</sup> Indeed, it has been suggested that the House Report on the final version of the FOIA, which "ambitiously undertakes to change the meaning that appears in the Act's words,"<sup>4</sup> reflects IRS pressure upon the House to broaden the "personal rules" exemption (Exemption No. 2 of the FOIA), to include within the exemption operating rules, guidelines and manuals of procedure for government investigation.<sup>5</sup>

In any case, IRS regulations implementing the Act, which came into effect on July 1, 1967, one year after the Act was signed by the President (the maximum time allowable for agencies to implement the Act), reveal almost no change in IRS practices as they were before the Act became law. These regulations permit public inspection of only the following types of information not previously available to the public: comments submitted upon proposed regulations, (if submitted after August 2, 1967, and if the commentator did not wish his comments held Confidential);<sup>6</sup> a drastically censored version of the IRS Manual, which was in July 1967 placed in the reading room of the IRS National Office;<sup>7</sup> and a loose-leaf notebook containing "Policy Statements of the IRS," which dealt with general personnel matters largely overlapping the IRS Manual and various published statements of the IRS.<sup>8</sup>

The IRS did almost as much at the time to inhibit the release of information, by creating in July 1967 a multi-level process for review of information requests that included a 30-day waiting period for obtaining government information.<sup>9</sup>

Since the enactment of the Act and the IRS's promulgation of supposedly enabling regulations, the Service has vigorously but generally unsuccessfully opposed all attempts to uncover information subject to disclosure, as court cases under the Act demonstrate.<sup>10</sup> Thus, the Congressional Committee with responsibility for oversight of the administration of the Freedom of Information Act has documented and commented with disfavor upon the unsatisfactory response of the Service to the requirements of the Act.<sup>11</sup>

<sup>1</sup> S. Rep. 813: "After it became apparent that Section 3 of the Administrative Procedure Act was being used as an excuse for secrecy, proposals for change began."

<sup>2</sup> "The first of these proposals, S. 2504, 84th Cong., introduced by Senator Wiley, and S. 2541, 84th Cong., by Senator McCarthy, arose out of recommendations by the Hoover Commission Task Force." *Id.* at 3-4.

<sup>3</sup> See, e.g., *Hearings before the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary*, (88th Cong., 2d Sess., July 21 through 23, 1964), at page 177A.

<sup>4</sup> S. Rep. 813: "After it became apparent that Section 3 of the Administrative Procedure Act was being used as an excuse for secrecy, proposals for change began." *Id.* at 29 (testimony of Edwin F. Rains, Assistant General Counsel, Treasury Department), 439 (Treasury Department Memorandum). Mr. Rains said at that time, "Despite what has been done [to amend the Freedom of Information Act since the last session of Congress], our generally adverse conclusions with respect to [the bill] still persist," *Id.* at 33.

<sup>5</sup> Davis, *Administrative Law Treatise* (1970 supplement) at 117.

<sup>6</sup> This suggestion is made in Sobeloff, "The New Freedom of Information Act: What It Means to Tax Practitioners," 27 *Journal of Taxation* 130 (1967). The attempt of the House Committee to expand the terms of the personnel rules exemption appears in the Committee Report, House Report No. 1497, "Government Information—Public Access," (89th Cong. 2d Sess. 1966), 1966 U.S. Code Congressional and Administrative News 2418 at 2427.

<sup>7</sup> IRS Regulations § 601.601(b).

<sup>8</sup> See Sobeloff *supra* note 5, at 130.

<sup>9</sup> See Sobeloff, *Id.* at 132.

<sup>10</sup> See IRS Regs. 601.702(c)(10), which provides: "If the request is denied upon appeal pursuant to subparagraph (9) of this paragraph, or if no determination is made on the appeal within 30 days after filing, the appellant may commence an action in a U.S. District Court pursuant to 5 U.S.C.A. § 552(a)(3)." It was predicted at the time that this regulation would "tend to slow down contested requests and make it more difficult to obtain information," Sobeloff, *Id.* at 131.

<sup>11</sup> See *Hawkes v. IRS*, 467 F. 2d 787 (6th Cir. 1972) (portions of the IRS Manual), *Tax Analysts and Advocates v. IRS*, 362 F. Supp. 1298 (D. D. C. 1972) (letter rulings and technical memoranda of the IRS); and see also *Center on Corporate Responsibility, Inc. v. Schultz*, — F. Supp. — (D. C. 1973).

<sup>12</sup> H. Rep. 92-1419, "Administration of the Freedom of Information Act," (92nd Cong. 2d Sess. 1972) at 23. Many of the problems presented by the Service's attitude and actions since 1967 appear as administrative or legislative "problems," identified by the House Committee as preventing the full implementation of the Act. See, *Id.* at pages 9-11.

## APPENDIX B

In the United States District Court for the Southern District of Alabama  
Southern Division

Civil Action No. 7742-73-P

BART B. CHAMBERLAIN, JR., ETC., PLAINTIFF

v.

DONALD C. ALEXANDER, ET AL., DEFENDANTS

## ORDER

The plaintiff has brought this action against the defendants under Section 3 of the Administrative Procedure Act, as amended, 5 USC §442, (1970) usually referred to as the Freedom of Information Act, seeking preliminary and final injunction against the defendant from withholding certain information and documents from the plaintiff. He alleges that a tax proceeding is in progress against him and in order that he may proceed with adequate preparation of his defense and the hearing of the tax case, it is essential that he be provided with certain information and documentary evidence presently within the knowledge, possession, custody or control of the Internal Revenue Service.

The plaintiff has propounded thirty-six interrogatories to Donald C. Alexander, Commissioner of Internal Revenue, many of which contain numerous subdivisions. The defendant ALEXANDER has filed his answers and amended answers. The plaintiff has filed a motion to compel discovery and to impose sanctions and an amended motion thereto alleging the defendant, Donald C. Alexander, objected to answering interrogatories numbered 1 through 14, 16, 17 and 18, objected to and answered only in part interrogatories numbered 22, 24, 25, 27, 28, 29, 31 and that he insufficiently answered interrogatories 15D, 23, 26, 30, 35, and 36.

The defendant contains that the information in documents sought by the plaintiff in the interrogatories are irrelevant and immaterial and having no relationship to the issue in the law suit and further, the existence of identifiable agency records and their exemption or lack of it under the Freedom of Information Act.<sup>1</sup>

15 USC § 552: (4) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(b) This section does not apply to matters that are—(2) related solely to the internal personnel rules and practices of an agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency; (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.

It was the clear intention of Congress that the obligation to produce records mandated by the Freedom of Information Act is to be construed broadly and the exemptions thereunder narrowly. The Act makes disclosure the rule and secret the exception. *Ethel Corporation vs. IIPA*, 478 F. 2d 47 (4th Cir. 1973). The Fifth Circuit said in *Stokes vs. Brennan*, 476 F. 2d 699 (1973): "The Act was intended to increase public access to such records through the imposition of liberal disclosure requirements limited only by specific, narrowly construed exemptions."

The defendant has merely alleged in general terms that the information or documents sought by the interrogatories come within the exemptions of the Act. He has failed to specify in detail which documents or portions thereof are disclosable and which are within the exemption. The defendant has placed the court in a position where it is impossible for the court to determine which of the documents and information, if any, fall within the exemptions of the Act. Section 552(3) places the burden on the agency to sustain its action in refusing to produce identifiable records.

The defendant is hereby ORDERED to prepare and file with the Court within twenty-one (21) days from the date of this order a detailed analysis of all

documents claimed to be exempt from disclosure in manageable segments which shall not contain factual descriptions, that, if made public, would compromise the secret nature of the information, but could ordinarily be composed without excessive reference to the actual language of the document. *Vaughan v. Rosen*, 484 F. 2d 820 (DC C.A. 1973); *Environmental Protection Agency vs. Mink*, 410 U.S. 73 (1973). It is only after a careful consideration of the analysis of the particular documents in question that the Court can determine whether or not the exemptions claimed by the defendant are well taken.

DONE at Mobile, Alabama, this 12 day of April, 1974.

VIRGIL PILLURETT,  
U.S. District Judge.

#### APPENDIX C

In the United States District Court for the Southern District of  
Alabama Southern Division

CA No. 7742-73-P

BART B. CHAMBERLAIN, JR., PLAINTIFF

v.

DONALD C. ALEXANDER, COMMISSIONER INTERNAL REVENUE SERVICE, ET AL.,  
DEFENDANTS

#### PLAINTIFF'S REPLY TO DEFENDANTS' "RESPONSE TO ORDER OF APRIL 12, 1974"

The Complaint in this case, filed in July 1973, seeks production of certain specified categories of documents under the Freedom of Information Act, 5 U.S. Code § 552. Over the past 10 months, Defendants have repeatedly refused either to produce the documents requested or to identify those documents with sufficient specificity to permit the Court to determine whether Defendants claims of exemption from production are valid.<sup>1</sup>

On April 12, 1974, this Court entered an Order specifically finding that Defendant Alexander "has failed to specify in detail which documents or portions thereof are disclosable and which are within the exemption." The Court accordingly directed submission of "a detailed analysis of all documents claimed to be exempt from disclosure in manageable segments." This Court pointed out that "it is only after a careful consideration of the analysis of the particular documents in question that the Court can determine whether or not the exemptions claimed by the Defendant are well taken." (Emphasis added).

Defendant has now produced a document purporting to be a "Response" to that Order.

It is again apparent, from the "Response" that Defendants are playing a "shell game" with the Court in which they are not only concealing the pea but hiding the shells.

The "Response" virtually assures that this Court will be unable to make any determination of exemption with respect to specific documents. The documents in question are so inadequately described as to deprive the Court of any power to make that analysis. Defendants compound this Court's problems by submitting generalized legal argument unrelated to individual documents, thereby further assuring this Court's inability to evaluate exemption claims or to relate specific exemption claims to specific documents.

This is a travesty of a response to the Court's Order.

Defendants have patently denied this Court the information necessary for a rational decision of the issues. It is thus now entirely appropriate for the Court to impose the sanctions authorized by Rule 37(b)(2)(A)-(C), FRCP with respect to all or any part of the non-complying "Response."

The Court should do so.

<sup>1</sup> See e.g. Answer to Complaint, September 5, 1973; Defendants' Opposition to Discovery and Motion for Protective Order served November 1, 1973; Plaintiff's Motion for Order Compelling Discovery and Imposing Sanctions served November 15, 1973; Defendant Alexander's Answers to Plaintiff's Interrogatories filed January 3, 1974; Plaintiff's Motion to Compel Discovery and Impose Sanctions filed January 3, 1974; Plaintiff's Amendment of Motion to Compel Discovery and Impose Sanctions and In Support of Motion to Strike Defendants' Defenses and to Enter Judgment on the Pleadings.

## ARGUMENT

This Court's Order, following *Vaughn v. Rosen*<sup>2</sup> necessarily required:

1. A detailed description of the contents of each document in issue.
2. A specific statement of the reasons why any individual statutory exemption is claimed to apply to a particular document or portion thereof.
3. An index or concordance relating specific documents, or parts thereof, to individual claims of exemption.<sup>3</sup>

Defendants did not comply with any of those requirements. Instead Defendants' action here represents precisely the kind of bureaucratic evasion that *Vaughn* and, we believe, this Court's Order, were designed to eradicate. In commenting on the agencies tendencies to evade disclosure, the *Vaughn* court said:

[F]rom a bureaucratic standpoint, a general policy of revelation could . . . bring to light information detrimental to the agency and set a precedent for future demands for disclosure.

" . . . [S]ince the burden of determining the justifiability of a government claim of exemption currently falls on the court system, there is an innate impetus that encourages agencies automatically to claim the broadest possible grounds for exemption for the greatest amount of information. Let the Court decide! And the tactical ploy is, to the extent that the number of facts in dispute are increased, the efficiency of the court system involved in that dispute resolution will be decreased. If the morass of material is so great that court review becomes impossible, there is a possibility that an agency could simply point to selected, clearly exempt portions, ignore disclosable sections, and persuade the court that the entire mass is exempt." 484 U.S. 820 at 826.

The description precisely identifies the calculated obfuscation practiced by Defendants in their "Response."

#### I. DEFENDANTS HAVE FAILED TO COMPLY WITH THIS COURT'S REQUIREMENT TO MAKE A DETAILED ANALYSIS OF ALL DOCUMENTS CLAIMED TO BE EXEMPT.

A. Although this Court's Order directed a detailed analysis of "all" documents claimed to be exempt, the Court will nowhere find an explicit statement by defendants that the "Response" does, in fact, describe "all" documents. Instead, without stating whether all documents are reported on, defendants merely submit the affidavits of three Internal Revenue Service employees and leave to the Court and the Plaintiff to speculate whether "all" documents have in fact been covered thereby.<sup>4</sup>

B. The most flagrant examples of non-compliance appear in the affidavit of Richard J. Morris. That affidavit demonstrates an obvious non-compliance with the Court's Order for detailed analysis. The following instances are exemplary, but hardly exhaustive, of the Morris affidavit deficiencies:<sup>5</sup>

Paragraph 3e of the Morris affidavit cites the existence of "190 pages of information furnished by Mr. Chamberlain . . ." with not even a suggestion of an effort of analysis of each individual document.

Paragraph 3i recites the existence of "52 pages of correspondence with the United States Department of Justice concerning Mr. Chamberlain's suit for refund and recomputation of tax for the years 1958 through 1961." No effort is made to provide the Court with any information that would help in determining whether and to what extent non-exempt materials are included.

Paragraph 3n reports "94 pages of miscellaneous correspondence relating to Mr. Chamberlain and related taxpayers for current examination and prior years in litigation." No attempt is made to analyze any of those 94 pages.

Paragraph 3o reports "75 pages of miscellaneous correspondence . . .".

Paragraph 3p reports an undisclosed number of items of "miscellaneous correspondence."

<sup>2</sup> 484 F.2d 820 (App. D.C., 1973).

<sup>3</sup> Compare 484 F.2d 820, 826, *et seq.*

<sup>4</sup> There is ample ground to conclude they have not been. See for example Paragraph 4 of the Affidavit of Richard J. Morris which contains a blatant admission that some 16 documents undescribed "may possibly be within the scope of the request" and there are "possibly other documents within the files of the Internal Revenue Service" with respect to which not even a pretense of analysis has been made. No description is given of the criteria that distinguish those categories admittedly within, from those asserted without, the scope of Plaintiff's request.

<sup>5</sup> Ironically, this affiant identifies himself as a member of the "Freedom of Information Group, Disclosure Staff." Although 10 years ahead of 1984, these designations presage the Orwellian "Newspeak" in which "war" means "peace," "disclosure" means "concealment," etc.

Paragraph 3ii reports "114 pages of interdistrict correspondence concerning partners located in other districts."

Paragraph 3kk makes indiscriminate reference to "copies of complaints and answers in civil litigation not involving federal taxes." No attempt at explanation is given why these unidentified pleadings should not be released.

Paragraph 5b of the Moore affidavit refers to certain undefined correspondence "regarding the Service's internal examination in the expiration of the statute of limitations." As Defendants well know, the matter of their evasion of the impact of "the expiration of the statute of limitations" raises substantial and important public questions of the fairness of the IRS treatment of taxpayers. It is clearly a highly sensitive matter from the standpoint of Defendants. By simply wrapping that entire matter into a bundle of indiscriminate materials without defining each individual document, Defendants bar the Court from making an analysis of the allegedly exempt status of these materials.

Even this incomplete description of the defects in this single affidavit reflects that the Defendants have evaded a real response with respect to more than 555 pages of admittedly relevant documents.

There is no way the Court can make the necessary determinations relating to exemption if all it has to rely upon is references to "114 pages of interdistrict correspondence," to "75 pages of miscellaneous correspondence"; to "94 pages of miscellaneous correspondence," etc.

## II. DEFENDANTS HAVE FAILED TO COMPLY WITH THE REQUIREMENT TO CORRELATE SPECIFIC DOCUMENTS AND PORTIONS THEREOF WITH SPECIFIC CLAIMS OF EXEMPTION

In addition to the defects most clearly displayed in the Morris affidavit, the "Response" as a whole is defective because it totally fails to correlate "statements made in the Government's refusal justification with the actual portions of [each] document"<sup>6</sup> in issue.

An obvious handicap is imposed upon the Court when an unsegregated mass of documents is claimed to be exempt, by reliance upon unsegregated and unexplained references to the multiple exemptions provided by the statute.

This handicap prompted the *Vaughn* Court to require the indexing and correlating of specific document portions with specific exemption claims. Thus, that Court said:

"From the record, we do not and cannot know whether a particular portion [of a document] is, for example, allegedly exempt because it constitutes an unwarranted invasion of a person's privacy or because it is related solely to the internal rules and practices of an agency. While it is not impossible it seems highly unlikely that a particular element of the information sought would be exempt under both exemptions. Even if isolated portions of the document are exempt under more than one exemption, it is preposterous to contend that all of the information is equally exempt under all of the alleged exemptions. It seems probable that some portions may fit under one exemption, while other segments fall under another, while still other segments are not exempt at all and should be disclosed. The itemization and indexing that we herein require should reflect this." 484 U.S. 820, at 827-828.

The Defendants nevertheless proceeded to present this Court with a largely undifferentiated, unparticularized description of a mass of documents relying upon undifferentiated and unparticularized claims of exemption.

Thus the memorandum portion of Defendant's response insists that all of the materials covered in both the Wolfe and Nossen affidavits<sup>7</sup> relating primarily to manuals, are exempt under the provisions of Sections 552(b) (2) and 552(b) (5) of the Statute; that all are exempt under the provisions of an "exemption" assertedly provided by Section 552(A) (2) (C) and that some are exempt under the provisions of Section 552(b) (7). Similarly what appears to be hundreds of documents discussed in Paragraph 3 of the Morris affidavit, for example, are alleged to be exempt under the provisions of Section 552(b) (3) and derivatively

<sup>6</sup> 484 F.2d 820 at 827.

<sup>7</sup> The Court should not assume that Plaintiff concedes the Wolfe and Nossen affidavits to be faultless merely because no specific criticism has been made of them in the preceding section of this memorandum. In fact many of the same defects that appear in the Morris affidavit appear in more subtle form in those of Wolfe and Nossen. We see no point however in lengthening the argument respecting the inherent deficiencies in the affidavits beyond the scope of the exemplary Morris affidavit. The obvious defects in that affidavit alone are sufficient in and of themselves to establish the inadequacy of the entire "Response."

under Section 6103(a)(1) of the Internal Revenue Code. Many of the same groups of documents are allegedly exempt under Sections 552(b)(5) and 552(b)(7).

Finally, the documents described in Paragraphs 5(a) and (b) of the Morris affidavit are asserted to be exempt under the conditional exemption provided for personnel files under Section 552(b)(6) of the Statute as well as Section 552(b)(7), even though Mr. Morris' affidavit totally fails to state with anything even approaching the required specificity, precisely what documents are covered within his categories 5(a) and 5(b) and what attributes of each subject it to one or both of the claimed exemptions.

The simple task imposed on the Defendants by this Court's April 12 Order, is hardly insurmountable. That Order required that they do no more, essentially, than would any civil litigant seeking to defend a claim of privilege in ordinary documentary discovery proceedings; i.e., (1) identify each document by date, author, and recipient, and provide a detailed description of the various subject matters of the document that may, nevertheless, conceal its actual substance; (2) specify those parts claimed to be exempt and (3) explain, by reference to each claim of "privilege" (specific statutory exemption) assertedly applicable why that particular "privilege" (exemption) is claimed to apply.<sup>8</sup>

#### CONCLUSION

Clearly, then, the Defendants have engaged in precisely the kind of game with this Court about which the *Vaughn* opinion warned. As predicted by *Vaughn* (p. 3-4, *supra*), they have attempted to shift to this Court their burden of analyzing documentary materials that the Court could not conceivably analyze because it has not been provided with adequate information.

Although Defendants have shifted the work burden to the Court, they have failed to sustain their statutory burden of proof.<sup>9</sup> Moreover they have deprived Plaintiff of any opportunity to assist the Court in this matter. It would be a waste of the Court's time for Plaintiff to attempt to argue, at this time, whether any specific exemption applies to any specific document, when Defendants have largely assured the impossibility of Plaintiff's, or the Court's, identification of any specific document or portion thereof.<sup>10</sup>

Defendants' sad excuse for a "response" is no accident. Defendants are well aware of their duties. In the nine months since the *Vaughn* decision issued, Plaintiff has repeatedly called to the attention of Defendants the existence and requirements of that decision. This Court applied those standards in its Order of April 12.

The sanctions authorized by Rule 37(b)(2)(A)-(C) FRCP should now be invoked by the Court.<sup>11</sup> If the Court should choose not to grant Plaintiff judgment by default as to all aspects of this case, pursuant to Rule 37, then at least Defendants should be required strictly and promptly to comply with the April 12 Order, as well as fully to respond to the interrogatories identified in Plaintiff's January 3, 1974, Motion to Compel Discovery, amended January 25.<sup>12</sup>

<sup>8</sup> Thus, it is hardly sufficient merely to state, for example, that exemption 5 (5 U.S.C. § 552(b)(5)) relating to intra-agency memoranda, would apply. It would be essential to show not merely that the specific document in issue is an intra-agency memorandum but to explain why it "would not be available by law to a party . . . in litigation with the agency." Similarly, in the case of Exemption 6, it is essential to explain not merely that the document in issue is part of a "personnel file," but to explain that, and why, "disclosure would constitute a clearly unwarranted invasion of personal privacy," etc. Instead of performing that exercise Defendants have left the task for this Court.

<sup>9</sup> The only contested fact issue in this case is whether Defendants have produced the data essential to a Court determination whether the agency has sustained its action. The statute provides that "the burden is on the agency to sustain its action." By failing to comply with this Court's April 12 Order, Defendants have failed to sustain their burden.

<sup>10</sup> Some issues relating to limited aspects of the Wolfe and Nossen affidavits may now be susceptible of argument to, and disposition by, the Court. If Plaintiff were to attempt to argue those limited issues based on partly concealed data, at this time, however, piecemeal consideration and disposition would be required by the Court, since disposition of a substantial segment of the entire case is dependent upon information that Defendants have not made available to Plaintiff or to the Court.

<sup>11</sup> See Plaintiff's Motion to Strike, etc. filed November 29, 1973.

<sup>12</sup> The Court has broad equitable powers to aid it in assuring prompt compliance. They include the power to enjoin any further IRS action in the substantive tax dispute between *Renegotiation Board v. Bannerkraft Clothing Company, Inc.*, — U.S. —, 39 L. Ed. Plaintiff and IRS, pending disposition of this Freedom of Information Act suit: see 42 122 (1974) discussed in correspondence from the parties hereto to this Court of March 6 and 8, 1974.



Upon Defendants compliance with the April 12 Order, Plaintiff will be able rationally to present, and this Court will be able to dispose of, legal argument with respect to the exemption issues with which Defendants have thus far avoided dealing.

Respectfully submitted,  
Of Counsel.

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#### CERTIFICATE OF SERVICE

I hereby certify that I have this — of May 1974 served the foregoing Reply upon attorney for Defendants by first class mail postage prepaid.

Senator KENNEDY. Fine.

The subcommittee stands in recess.

[Whereupon, at 12:35 p.m., the subcommittee recessed, subject to call of the Chair.]

[The following material was received by the subcommittee relating to matters discussed in the hearings:]

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE,  
Washington, D.C., October 23, 1974.

HON. EDWARD M. KENNEDY,  
*Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: In view of your interest in the manner in which the Internal Revenue Service is making materials available to the public, I am enclosing a copy of a recent news release announcing a reduction in charges for copies of various documents. I would like to call your particular attention to the statement of our practice of not charging for requests from low-income or hardship cases, or those from disaster areas.

We believe that these new, lower charges will make it much easier for interested persons to obtain documentary materials. These charges do not apply, of course, to those materials necessary, or helpful, for the preparation of tax returns. Such materials will continue to be available free of charge.

Although these changes will mean that the IRS will have increased unreimbursed costs in this general area, we believe that this is an acceptable cost of informing the interested public about IRS operations.

With kind regards,

Sincerely,

DONALD C. ALEXANDER,  
*Commissioner.*

Enclosure.

DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Washington, D.C.

NEWS RELEASE, IR-1428

WASHINGTON, D.C.—The Internal Revenue Service today announced reduction of the \$1 per page charge for taxpayers wishing to obtain copies of their own tax returns. The charge has been lowered to \$1 for the first page and 10 cents for each additional page.

The IRS also announced a reduction in charges for copies of other returns and related documents that may be made public under the law. For example, copies of applications and returns of tax exempt organizations, are lowered from \$1 per page to \$1 for the first page and 10 cents for each additional page.

Copies of documents available in IRS Freedom of Information Reading Rooms will continue to be 10 cents per page. However, the \$1 minimum charge for copies of documents available under the Freedom of Information Act has been eliminated.

There are no charges for merely inspecting documents in IRS offices. Other charges, which remain unchanged are as follows:

Copies of documents not located in FOI Reading Rooms are 10 cents per page plus \$3.50 per hour or fraction of an hour search charge for locating and assembling the material.

If IRS certification of copies of returns or other documents is needed, each certification is \$1.

The charge for each 25 pages or less of unpriced, printed material is 25 cents.

The IRS will continue its no-charge practice on requests for copies of tax returns from individuals in low income brackets or hardship circumstances, or from those who reside in disaster areas. This practice will now also apply to requests under the Freedom of Information Act.

Applicable provisions in Revenue Procedures, Regulations and the Statement of Procedural Rules will be revised or amended to reflect changes in user fees.

DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Washington, D.C., July 29, 1974.

HON. EDWARD M. KENNEDY,  
*Chairman, Subcommittee on Administrative Practice and Procedure,*  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR KENNEDY: We have carefully reviewed our files of Freedom of Information Act correspondence in order to provide an accurate response to your inquiry of June 28, 1974.

We trust that the enclosed materials will be satisfactory. Please inform us if we may be of further assistance.

With kind regards,

Sincerely,

DONALD C. ALEXANDER,  
*Commissioner.*

Enclosures.

RESPONSES TO FREEDOM OF INFORMATION REQUESTS

(January 1, 1974-June 30, 1974)

(a) The number of determinations made by the Service not to comply with requests for records made under the FOIA, and the reasons for such determination.

During the six-month period involved, the Service denied sixty-five requests for records. As some requests involved more than one type of record and some records are subject to more than one exemption, a total of one hundred and sixty-five exemptions were cited, as follows:

(b) (1) specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy—not used.

(b) (2) related solely to the internal personnel rules and practices of an agency—14 instances.

(b) (3) specifically exempted from disclosure by statute—37 instances.

(b) (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential—33 instances.

(b) (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency—48 instances.

(b) (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy—3 instances.

(b) (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency—30 instances.

(b) (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions—not used.

(b) (9) geological and geophysical information and data, including maps, concerning wells—not used.

Fifty-seven per cent of the denials involved information which we are prohibited by law from disclosing, including other taxpayers' returns, Technical Advice Memorandums, Letter Rulings, and intra-agency memorandums identifying and relating to the tax affairs of specific taxpayers. All of the uses of Exemption (b) (4), half of the uses of Exemption (b) (5), all of the uses of Exemption (b) (6), and two-thirds of the uses of Exemption (b) (7) applied to requests which were also denied under Exemption (b) (3) as specifically prohibited from disclosure by statute.

The balance of the denials used various combinations of Exemptions (b) (2), (b) (5), and (b) (7) to deny requests for exempt information whose release would have significantly impeded tax administration and hindered law enforcement.

Eleven per cent of all denials involved individuals under investigation requesting workpapers, conference reports or investigatory files pertaining to themselves.

Eighteen per cent of all denials involved law enforcement techniques, tolerances, and criteria whose usefulness would be destroyed if they became known to the public. The majority of these requests pertained to criminal, rather than civil, law enforcement procedures.

Fourteen per cent of all denials involved requests for inter- or intra-agency memorandums containing expressions of opinion or making recommendations, attorneys' work products, drafts, or background files whose release would inhibit internal communication.

Our records indicate that in ten denials the Service made available a part of the information requested or provided alternative information which was believed to be helpful to the requester.

(b) The number of appeals . . . and the reason for the action upon each appeal that resulted in a denial of information.

During the six-month period involved, the Service responded to fifteen appeals. Two were granted. Thirteen were denied. Thirty-four exemptions were applicable to the thirteen denials, as follows:

- (b) (1)—Not used.
- (b) (2)—Not used.
- (b) (3)—8 instances.
- (b) (4)—8 instances.
- (b) (5)—8 instances.
- (b) (6)—Not used.
- (b) (7)—10 instances.
- (b) (8)—Not used.
- (b) (9)—Not used.

Sixty-two per cent of the denials on appeal involved information which we are prohibited by law from disclosing, including Technical Advice Memorandums, Letter Rulings, and other items specifically identifying taxpayers and relating to their tax affairs. All of the uses of Exemption (b) (4), half of the uses of Exemption (b) (5), and slightly over half of the uses of Exemption (b) (7) applied to requests which were also denied under Exemption (b) (3) as specifically prohibited from disclosure by statute.

Thirty-one per cent of the denials on appeal involved individuals under investigation requesting workpapers or investigation files pertaining to themselves, and exempt under (b) (5) and (b) (7).

Seven per cent (a single case) involved advisory intra-agency memorandums exempt under (b) (5).

Our records indicate that in one denial on appeal, the Service made available a part of the information requested or provided alternative information which was believed to be helpful to the requester.

(c) The time that elapsed between receipt of each initial FOIA request and the transmittal of a substantive reply. . . .

In analyzing the time elapsed for response we employed the five categories suggested by Mr. Susman, Counsel for the Senate Subcommittee on Administrative Practice and Procedure. These were: 1 to 10 days, 11 to 20 days, 21 to 40 days, 41 to 60 days, and over 60 days.

Readers of this report should keep in mind that these are consecutive calendar days and should not be confused with workdays. The 1 to 10 days category can never include more than eight workdays (requests received on a Monday, Tuesday or Wednesday). The period would contain only seven workdays for any request received on a Thursday and six workdays for a request received on a Friday. This would have to be further reduced for periods which contained one or more holidays: for instance, for a request received on December 21, 1973, the 1 to 10 day category would only have contained four workdays (the period included two weekends, Christmas and New Year Holidays, and two energy crisis non-work days). This circumstance resulted in delays affecting a large number of routine cases received in the latter part of 1973.

Similarly, the 11 to 20 days category would contain a maximum of fifteen workdays for any request received on a Monday and fourteen workdays for any request received on Tuesday through Friday, less any holidays which might fall in the period.

The importance of this distinction between calendar days and workdays is that if the Fifteen Day (excepting Saturdays, Sundays, and legal public holidays) requirement proposed in S. 2543, were to be applied to the performance statistics here being reported, all the responses in the 1 to 10 day category, all the responses in the 11 to 20 day category and many of the responses in the 21 to 40 day category would have been timely.

During the January 1 through June 30, 1974 period, the Internal Revenue Service issued 637 responses to Freedom of Information requests, as follows:

(Responses)

Days:	
1-10	303
11-20	103
21-40	136
41-60	64
Over 60	31

We are able, however, to break down these figures to several categories, which we believe provide greater insight:

Category	1-10 days	11-20 days	21-40 days	41-60 days	Over 60 days
Reading room grants	94	None	None	None	None
Routine grants	185	55	54	22	15
Unable to identify	14	23	20	12	5
Initial grants	10	13	26	20	4
Denials	None	12	36	10	7

Reading Room Grants are the simplest Freedom of Information requests. These cases are characterized as involving specific requests for clearly identified materials which have already been deposited in our Freedom of Information Reading Room, as available to the public. They involve less than fifty dollars in charges, do not require any evaluation or records search, and do not require any correspondence. As a result, these requests can be filled by the Reading Room Manager, using a simple Freedom of Information Invoice, and no review or clearance. All Reading Room Grants were processed within the 1 to 10 day period; in fact most are mailed on the same day received. However, Reading Room Grants account for less than one-sixth of the responses processed.

Routine Grants involve materials which have previously been made available or which are otherwise recognized as being public records without requiring an initial determination. Routine Grants accounted for more than half of our responses during this period. These cases differ from the Reading Room Grants in that they are more complicated, the requests may not be specific, materials requested may not be clearly identified, they may involve extensive materials, require considerable research, or require correspondence in addition to a simple transmittal. The delays in such cases are usually related to the effort involved in working the request or other circumstances, rather than to the need for making a determination of availability. A majority of the Routine Grants were processed within the 1 to 10 day period; however, some spillover to later periods is evident, reflecting the more difficult nature of these cases.

Unable to Identify cases are those requests in which no material can be furnished because we are unable to determine from the request what is wanted, the requested record does not exist, or the record is not required to be compiled in the form requested. These cases represented about one tenth of our responses during the period considered. Inasmuch as the Service maintains a considerable variety of records and no one person can be familiar with them all, considerable coordination and review are required before we can conclude that a requested record does not exist. Consequently, an extensive time framework is involved and the bulk of these cases are clustered in the 11 to 20 day and 21 to 40 day categories.

Initial Grants are cases in which the materials requested have not been published, deposited in the Reading Room, or customarily furnished to requesters, or which have some other unique aspect. About one-tenth of the cases processed during the six month period fall into this category. These cases involve all the complexities mentioned as causes for delay applicable to Routine Grants, except that since they involve materials not previously considered by our Freedom of Information technicians they are likely to encounter more difficulty in locating these materials and the materials are less familiar when located than those in-

volved in Routine Grants. Moreover, once the materials have been identified and secured, they must now be analyzed and a determination of availability made. The response must then be submitted for extensive clearance and review before being issued. Accordingly, few Initial Grants can be processed within the 1 to 10 day and 11 to 20 day periods, and these cases are found clustered in the 21 to 40 day and 41 to 60 day periods.

Denials are those cases in which the Service has made a determination not to comply with a request for records made under the Freedom of Information Act. The sixty-five Denials issued during this six-month period represent about one tenth of our responses. We do not differentiate between Routine or Initial Denials; however, most of the materials denied would be immediately recognizable as items which we are prohibited from disclosing by statute. The Service has, however, avoided any tendency to routinely deny materials in the belief that such attitude would be inappropriate. In order to avoid unnecessary appeals and litigation, we do not routinely deny a class of documents, when in fact the specific document requested may not exist. Moreover, whenever we are able to offer a part of the material requested or some alternative material we attempt to do so. Those efforts are time consuming, as are the extensive reviews and clearances necessary before a denial can be issued. We believe these delays reflect our commitment to conscientiously administer the Freedom of Information Act. Consequently, more than half the Denials issued were clustered in the 21 to 40 day period.

(d) The time that elapsed between receipt of each appeal of a denial and the transmittal of a substantive reply.

During the six month period, fifteen Appeals were processed as follows:

Type	1-10 days	11-20 days	21-40 days	41-60 days	Over 60 days
Appeals granted.....	None	None	1	None	1
Appeals denied.....	None	None	1	6	6

Responses to Appeals require careful preparation and extensive review. Each response to an Appeal ultimately reflects the personal consideration of the Commissioner, or in the absence of the Commissioner an Acting Commissioner. The preparation and the level of review involved necessitate a considerable time lapse before an appeal can be answered. Moreover, under current requirements, every appeal must be submitted to the Department of Justice Freedom of Information Committee, if a denial is anticipated. This necessitates the preparation of a written submission to the Committee explaining our position, a review by the Committee of materials with which they have no prior acquaintance, occasional meetings with the Committee to discuss the proposed response, and finally, the issuance of a written recommendation by the Committee. We have, therefore, been unable to process appeals as promptly as we should like. Approximately half of the responses issued during this period were clustered in the 41 to 60 day period, whereas half required more than 60 days.

(e) Other information deemed relevant.

The Service has sought to make the major subject of request—the Internal Revenue Manual—readily available to the public.

The idea of permitting District Directors and Service Center Directors to make portions of the Manual available to the public is not new. Small amounts of Manual material were authorized for local release as early as February 1970. Most of the Manual, except for law enforcement procedures whose release would hinder tax administration, is now available to the public. On May 23, 1974, the Commissioner advised the field offices of the parts of the Manual which could be locally released. Further announcements will be made as more Manual material becomes available. In addition to this local distribution, two publishers are now offering Manual material for sale on a subscription basis. These innovations are expected to remove the Manual from the area of specific Freedom of Information requests.

## APPENDIX I

### Internal Revenue Service Regulations, Guidelines, Manual, and Policy Statements Concerning Freedom of Information

1. Definition of "Freedom of Information" Correspondence.
2. Receipt and Control of Correspondence.
3. Processing the Request.
4. Preparation of Grants.
5. Preparation of Denials.
6. Correspondence Filing Procedures.

#### FREEDOM OF INFORMATION

##### *1. Definition of "Freedom of Information" Correspondence*

The Service will treat as a Freedom of Information Act request any inquiry which:

A. Cites the Freedom of Information Act, the Public Information Section of the Administrative Procedure Act, Public Law 90-23, Public Law 89-487, 5 U.S.C. 552, 26 CFR 601.702, or any variation of the foregoing.

B. Or appears to request records in a manner which would indicate that the Freedom of Information Act would have been cited had the requester been aware of the Act.

C. Or requests to inspect or copy records which are usually evaluated in accordance with the Freedom of Information Act or which are in the Freedom of Information Reading Room.

D. And which does not appear to be subject to other clearly defined guidelines, such as requests for copies of returns, requests for testimony, or requests for address information.

##### *2. Receipt and Control of Correspondence*

A. Incoming "Freedom of Information" correspondence, after being stamped in, will be delivered to the Chief, Freedom of Information Branch, for assignment or transfer to the Freedom of Information Reading Room.

B. After assignment, a correspondence control card, Form 7000, with the words "Freedom of Information" typed thereon, will be prepared.

C. Each Form 7000 will have typed directly above the word "Acknowledged" the words "Response Due"—with an appropriate date filled in. The response due date will be the tenth working day after receipt for an initial inquiry and the twentieth working day after receipt for appeals.

D. The green copy of Form 7000 will be maintained as an open control file indexed by the response due date, a card separator identifying each day of the month—one through thirty-one.

E. As cases are closed, the Form 7000 will be removed from the green control file and used for the closed control file.

F. Each morning any remaining Forms 7000 for that date will be removed from the open control file and reviewed with the responsible technician for current status. Any case which is determined to be unresolved will immediately be acknowledged citing one of the following reasons for delay:

(1) The request records are stored in whole or part at other locations than the office in receipt of the request.

(2) The request requires the collection of a substantial number of specified records.

(3) The request is couched in categorical terms and requires an extensive search for the records responsive to it.

(4) The requested records have not been located in the course of a routine search and additional efforts are being made to locate them.

(5) The requested records require examination and evaluation to determine if they are exempt from disclosure.

(6) The requested records or some of them involve the responsibility of another agency or another bureau or office of the Department whose assistance or views are being sought in processing the request.

(7) Such other reason as may be the actual cause for the delay.

G. When additional time is required for one or more of the above reasons, the written acknowledgment shall include a notation of the reason for the delay and as definite an indication as possible of the time required for a decisive response. If it is not possible to accurately assess the time required for a final response, the acknowledgment will indicate a target date of ten additional workdays for initial requests and twenty additional workdays for appeals. The new response due date will be indicated on the Form 7000, which will be placed in the open control file for further follow-up.

H. Any case which remains unresolved upon the expiration of the extended response date will be brought to the immediate attention of the Chief, Freedom of Information Branch.

### *3. Processing the Request*

A. The technician to whom a request is assigned will determine whether the material requested has previously been made available or requires further determination, by researching the FOI Card Index, prior cases, and Reading Room Card Catalog.

B. Materials which have been previously made available do not require any concurrence, provided concurrence was obtained on the original grant. The Form 1725 routing the material to the Chief, Disclosure Staff, should identify the name, case number, and date of the prior grant.

C. Materials which require further determination should be obtained and analyzed. An informal meeting may be held with representatives of the affected division in an effort to obtain mutual agreement on the proposed reply. The response should be routed through the affected divisions, the designated attorney in the General Litigation Division, Office of Chief Counsel, and (if a denial) the Assistant to the Commissioner (Public Affairs). Requests concerning internal procedures governing the conduct of business in the Commissioner's office will be routed through the Commissioner's office. The Form 1725 should contain a brief explanation of the proposed action and cite any other relative cases.

D. Copies of responses to requests originating in District Offices, involving active tax cases, or offering an opportunity for local inspection of records should be provided to the affected district or other office.

### *4. Preparation of Grants*

A. Requests which are granted in their entirety and which do not require any explanation may be prepared on Form M-6001 without any accompanying correspondence. The Form 1725 should identify the material involved and should indicate "No Correspondence Necessary." If concurrences are necessary, they should be requested on the Form 1725.

B. If correspondence must accompany the Form M-6001, the signatures on the correspondence and Form M-6001 should be the same.

### *5. Preparation of Denials*

A. Denials must be prepared for the signature of the Assistant Commissioner (Compliance).

B. A reference to the specific exemption or exemptions under the Act authorizing the withholding of the record or a part thereof and a brief explanation of how the exemption applies to the record withheld must be included in every denial.

C. An outline of the appeal procedure and a statement that, in the event of denial upon appeal, the FOI Act makes judicial review available in the U.S. District Court in the district in which the complainant resides, or has a principal place of business, or in which the agency records are situated must be included in every denial.

### *6. Correspondence Filing Procedures*

A. Each closed case will be numbered when the reply has been signed, and will be filed chronologically.

B. The number system will be as follows:



Type of Response :	Type of number
(1) Request granted—initial-----	1973 (GI-1)
(2) Request granted—routine-----	1973 (GR-1)
(3) Request denied-----	1973 (D-1)
(4) Appeal granted, or granted in part-----	1973 (AG-1)
(5) Appeal denied-----	1973 (AD-1)
(6) Unable to identify, record does not exist, or record is not required to be compiled-----	1973 (U-1)

C. A number for Request Granted—Initial will be assigned whenever a requested record is granted which has not been published in the Federal Register or by press release or otherwise, or made available in a public reading room, or which has not been customarily furnished to requesters, whether or not the requester makes reference to the Freedom of Information Act. Grants which do not meet the above definitions will be assigned a number for Request Granted—Routine.

D. A copy of every grant or denial on appeal will be routed to the Freedom of Information Reading Room for inclusion in a public file.

E. A copy of any complete printed record granted, not already included in the Freedom of Information Reading Room, will be provided for addition to that collection, if considered suitable.

F. For each case, the employee preparing the response will, after approval of the reply, prepare a 5" x 8" card unless the information contained thereon would be identical to that already contained on such a card.

The card will contain the subject matter of the request (cross referenced by title, number, and subject if necessary), a short statement explaining the resolution, the identifying number of the case, and the date of the response.

G. Form M-6001 will be distributed as follows:

*White*—Always goes to the requester.

*Green*—Always goes to Fiscal Section.

*Yellow*—Goes to the requester if there is an amount due. Goes to Fiscal Section if amount submitted with request results in full payment.

*Pink*—Always retain as our case file.

*Gold*—Retain for invoice file, unless there is a partial payment with the request leaving a balance due, in which the Gold is forwarded to Fiscal with the part payment and photocopy is made for retention in the invoice file.

#### TECHNICAL INFORMATION RELEASE, TIR-1292

INTERNAL REVENUE SERVICE,  
Washington, D.C.

The Internal Revenue Service today called attention to an amendment of the Statement of Procedural Rules that relates to comments received in response to notices of proposed rule making published in the Federal Register.

The amendment, which appeared in the Federal Register for Monday, May 6, 1974, provides that designations of material as confidential or not to be disclosed, contained in written comments submitted in response to notices of proposed rule making of the Internal Revenue Service, will not be accepted. Thus, a person submitting such written comments should not include material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed that every written comment submitted to the IRS in response to a notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying.

The amendment applies only to comments submitted in response to notices of proposed rule making published in the Federal Register after June 5, 1974.

It is anticipated by the IRS that its usual form for a notice of proposed rule making will be revised to reflect the new rule.

The IRS also called attention to the fact that procedures are contained in the Statement of Procedural Rules for members of the public to inspect and to obtain copies of written comments submitted in response to its notices of proposed rule making.

*P-1-28 (Approved May 8, 1959)—Petitions for changes in regulations to be considered*

Interested persons have the privilege of petitioning for the issuance, amendment, or repeal of regulations, and such petitions shall be considered on their merits.

*P-1-29 (Approved March 23, 1967)—Proposed regulations are of a confidential nature*

The contents and status of proposed regulations are of a confidential nature until the notice of rule making is filed by the Office of the Federal Register, National Archives and Records Service, for public inspection. Likewise, the contents and status of final regulations are also of a confidential nature until the Treasury decision is so filed. During the period prior to such filing of either the proposed regulations or the final regulations, information cannot be disclosed to anyone outside the Department as to: (1) the position to be taken by the Department on a particular issue in the regulations; (2) where the regulations document has been routed for development or clearance; or (3) current status of regulations project. Exceptions may be made only by the Commissioner, the Deputy Commissioner, the Chief Counsel, the Director, Legislation and Regulations Division, and the Assistant Commissioner (Technical).

*Advance delivery of copies of regulations to "tax services" permitted in certain instances*

Advance copies of proposed regulations or final regulations may be delivered to publishers of "tax services," with the understanding that such regulations are of a confidential nature and subject to such conditions as are deemed appropriate, when it is determined that such action is in the best interest of the Service and the public.

*P-1-30 (Approved April 27, 1974)—Comments concerning proposed regulations*

Interested persons are privileged to submit any data, views or arguments in response to a notice of proposed rule making published pursuant to 5 U.S.C. 553. Further, procedures are provided for members of the public to inspect and to obtain copies of written comments submitted in response to such notices. Designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments in response to a notice of proposed rule making should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to a notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with proper procedures. The name of any person requesting a public hearing and hearing outlines are not exempt from disclosure. (Applies only to comments submitted in response to notices of proposed rule making published in the Federal Register after June 5, 1974.)

**§ 601.525 Certification of copies of documents.**

The provisions of paragraph (e) of § 601.504 with respect to certification of copies are applicable to a power of attorney or a tax information authorization required to be filed under § 601.522 or § 601.523.

**§ 601.526 Revocation of powers of attorney and tax information authorizations.**

The revocation of the authority of a representative covered by a power of attorney or tax information authorization filed in an office of the Alcohol, Tobacco, and Firearms Division shall in no case be effective prior to the giving of written notice to the proper official that the authority of such representative has been revoked.

**§ 601.527 Other provisions applied to representation in alcohol, tobacco, and firearms activities.**

The provisions of paragraph (b) of § 601.505, and of §§ 601.506 through 601.508 of this subpart, as applicable, shall be followed in offices of the Alcohol, Tobacco, and Firearms Division.

**§ 601.601 Rules and regulations.**

(a) *Formulation.* (1) Internal revenue rules or alcohol, tobacco, and firearms rules take various forms. The most important rules are issued as regulations and Treasury decisions, prescribed by the Commissioner or the Director, Bureau of Alcohol, Tobacco, and Firearms, as applicable, and approved by the Secretary or his delegate. Other rules may be issued over the signature of the Commissioner or the Director, as applicable, or the signature of any other official to whom authority has been delegated. The channeling of rules varies with the circumstances. Regulations and Treasury decisions, except those relating to alcohol, tobacco, and certain firearms, are prepared in the Office of the Chief Counsel. Alcohol, tobacco, explosives, and certain firearms regulations and Treasury decisions are prepared in the Office of the Regulations and Procedures Division and reviewed in the Office of the Chief Counsel, Bureau of Alcohol, Tobacco, and Firearms. After approval by the Commissioner or the Director, as applicable (and, in the case of regulations relating to narcotics and certain regulations relating to alcohol and tobacco taxes, the approval of the Commissioner of Narcotics or the Commissioner of Customs, as the case may be) regulations and Treasury decisions are forwarded to the Secretary or his delegate for further consideration and final approval.

(2) Where required by 5 U.S.C. 553 and in such other instances as may be desirable, the Commissioner or the Director, as applicable, publishes in the FEDERAL REGISTER general notice of proposed rules (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law). This notice includes (i) a statement of the time, place, and nature of public rulemaking proceedings; (ii) reference to the authority under which the rule is proposed; and (iii) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(3) (i) This subparagraph shall apply where the rules of this subparagraph are incorporated by reference in a notice of hearing with respect to a notice of proposed rule making.

(ii) A person wishing to make oral comments at a public hearing to which this subparagraph applies shall file his written comments within the time prescribed by the notice of proposed rule making (including any extensions thereof) and submit the outline referred to in subdivision (iii) of this subparagraph within the time prescribed by the notice of hearing. In lieu of the reading of a prepared statement at the hearing, such person's oral comments shall ordinarily be limited to a discussion of matters relating to such written comments and to questions and answers in connection therewith. However, the oral comments shall not be merely a restatement of matters the person has submitted in writing. Persons making oral comments should be prepared to answer questions not only on the topics listed in this outline but also in connection with the matters relating to his written comments. In order to be assured of the availability of copies of such written comments or outlines on or before the beginning of such hearing, any person who desires such copies should make such a request within the time prescribed in the notice of hearing and shall agree to pay reasonable costs for copying. Persons who make such a request after the time prescribed in the notice of hearing will be furnished copies as soon as they are available, but it may not be possible to furnish the copies on or before the beginning of the hearing. Except as provided in the preceding sentences, copies of written comments regarding the rules proposed shall not be made available at the hearing.

(iii) A person who wishes to be assured of being heard shall submit, within the time prescribed in the notice of hearing, an outline of the topics he wishes to discuss, and the time he wishes to devote to each topic. An agenda will then be prepared containing the order of presentation of oral comments and the time allotted to such presentation. Ordinarily, a period of 10 minutes will be the time allotted to each person for making his oral comments.

(iv) At the conclusion of the presentations of comments of persons listed in the agenda, to the extent time permits, other comments will be received.

(v) In the case of unusual circumstances or for good cause shown, the application of rules contained in this subparagraph may be waived.

(vi) To the extent resources permit, the public hearings to which this subparagraph applies may be transcribed.

(b) *Comments on proposed rules*—(1) *In general.* Interested persons are privileged to submit any data, views, or arguments in response to a notice of proposed rule making published pursuant to 5 U.S.C. 553. Further, procedures are provided in paragraph (d) (9) of § 601.702 for members of the public to inspect and to obtain copies of written comments submitted in response to such notices. Designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments in response to a notice of proposed rule making should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to a notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of paragraph (d) (9) of § 601.702. The name of any person requesting a public hearing and hearing outlines described in paragraph (a) (3) (iii) of this section are not exempt from disclosure.

(2) *Effective date.* This paragraph (b) applies only to comments submitted in response to notices of proposed rule making of the Internal Revenue Service published in the FEDERAL REGISTER after June 5, 1974.

(c) *Petition to change rules.* Interested persons are privileged to petition for the issuance, amendment, or repeal of a rule. A petition for the issuance of a rule should identify the section or sections of law involved; and a petition for the amendment or repeal of a rule should set forth the section or sections of the regulations involved. The petition should also set forth the reasons for the requested action. Such petitions will be given careful consideration and the petitioner will be advised of the action taken thereon. Petitions should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C., 20224.

(d) *Publication of rules and regulations*—(1) *General.* All internal revenue regulations and Treasury decisions are published in the FEDERAL REGISTER and in the Code of Federal Regulations. See paragraph (a) of § 601.702. The Treasury decisions are also published in the weekly Internal Revenue Bulletin and the semiannual Cumulative Bulletin. The Internal Revenue Bulletin is the authoritative instrument of the Commissioner for the announcement of official rulings, decisions, opinions, and procedures, and for the publication of Treasury decisions, Executive orders, tax conventions, legislation, court decisions, and other items pertaining to internal revenue matters. It is the policy of the Internal Revenue Service to publish in the bulletin all substantive and procedural rulings of importance or general interest, the publication of which is considered necessary to promote a uniform application of the laws administered by the Service. Procedures set forth in Revenue Procedures published in the bulletin which are of general applicability and which have continuing force and effect are incorporated as amendments to the Statement of Bulletin do not have the force and effect of Treasury Department Regulations (including Treasury decisions), but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose. No unpublished ruling or decision will be relied on, used, or cited, by any officer or employee of the Service as a precedent in the disposition of other cases.

(e) Taxpayers generally may rely upon Revenue Rulings published in the Bulletin in the determining the tax treatment of their own transactions and need not request specific rulings applying the principles of a published Revenue Ruling to the facts of their particular cases. However, since each Revenue Ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, taxpayers, Service personnel, and others concerned are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions, and revenue rulings.

(f) Comments and suggestions from taxpayers or taxpayer groups on Revenue Rulings being prepared for publication in the Bulletin may be solicited, if justified by special circumstances. Conferences on Revenue Rulings being prepared for publication will not be granted except where the Service determines that such action is justified by special circumstances.

(vi) Statements of procedures which affect the rights or duties of taxpayers or other members of the public under the Code and related statutes will be published in the Bulletin in the form of Revenue Procedures. Revenue Procedures usually reflect the contents of internal management documents, but, where appropriate, they are also published to announce practices and procedures for guidance of the public. It is Service practice to publish as much of the internal management document or communication as is necessary for an understanding of the procedure. Revenue Procedures may also be based on internal management documents which should be a matter of public knowledge even though not necessarily affecting the rights or duties of the public. When publication of the substance of a Revenue Procedure in the FEDERAL REGISTER is required pursuant to 5 U.S.C. 552, it will usually be accomplished by an amendment of the Statement of procedural Rules' (26 CFR Part 60).

(vii) (a) The Assistant Commissioner (Technical) is responsible for administering the system for the publication of Revenue Rulings and Revenue Procedures in the Bulletin, including the standards for style and format.

(b) In accordance with the standards set forth in subdivision (iv) of this subparagraph, each Assistant Commissioner is responsible for the preparation and appropriate referral for publication of Revenue Rulings reflecting interpretations of substantive tax law made by his office and communicated in writing to taxpayers or field offices. In this connection, the Chief Counsel is responsible for the referral to the appropriate Assistant Commissioner, for consideration for publication as Revenue Rulings, or interpretations of substantive tax law made by his Office.

(c) In accordance with the standards set forth in subdivision (iv) of this subparagraph, each Assistant Commissioner and the Chief Counsel is responsible for determining whether procedures established by any office under his jurisdiction should be published as Revenue Procedures and for the initiation, content, and appropriate referral for publication of such Revenue Procedures.

(3) All Bureau of Alcohol, Tobacco and Firearms regulations and Treasury decisions are published in the FEDERAL REGISTER and in the Code of Federal Regulations. The Treasury decisions are also published in the monthly Alcohol, Tobacco and Firearms Bulletin. The Alcohol, Tobacco and Firearms Bulletin is the authoritative instrument of the Director, Bureau of Alcohol, Tobacco and Firearms, for announcing official rulings and procedures of the Bureau and for publishing Treasury decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record. It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). Procedures relating solely to matters of internal management are not published; however, industry regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published. Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same. The Bulletin is published monthly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated each calendar year into cumulative issues, which are sold on a single-copy basis.

(e) *Foreign tax law.* (1) The Service will accept the interpretation placed by a foreign tax convention country on its revenue laws which do not affect the tax convention. However, when such interpretation conflicts with a provision in the tax convention, reconsideration of that interpretation may be requested.

(2) Conferences in the National Office of the Service will be granted to representatives of American firms doing business abroad and of American citizens residing abroad, in order to discuss with them foreign tax matters with respect to those countries with which we have tax treaties in effect.

May 23, 1974.

All Regional Commissioners Internal Revenue Service.

All District Directors Internal Revenue Service.

All Service Center Directors Internal Revenue Service.

(Priority) (MSARD and MSASC) reference Freedom of Information Act and Internal Revenue manual. We have underway a project to separate the manual into two parts—a larger portion which will be available to the public generally, not just to particular groups or organizations and a smaller portion containing information which is considered exempt from disclosure under the FOIA and will not be released.

The above is an outgrowth of our on-going declassification program which has resulted in many segments of the manual being declassified. However, many of these declassified segments have not been reissued so that current issues bear the official use only notation. To ensure uniform standards and understanding, a listing of manual material which addresses can make available to the public follows:

<i>Segment</i>	<i>Authority</i>
Part O.	Not classified OOU.
All Part I, except IRM Handbooks 1218, 1279, and 1(18)10 through 1(18) (10)0 series of handbooks.	MT 1200-127, 11-5-73 and other chapter MT's subsequently issued.
IRM Handbook 4810.	MT 4810-82, 8-2-73.
All Part V, except IRM 5170 Handbook and MT Part V-Index-4 (7-29-70).	This telegram, plus individual chapter MT's previously issued.
All Part VIII, except IRM 8(24)30 Handbook.	MT 8(23)00-12, 10-3-73 and other chapter MT's subsequently issued.
All Part IX, except IRM Handbooks 9180 and 9900.	This telegram, plus individual chapter MT's previously issued.
All Part X, except IRM (10)111 and (10)261 Handbooks.	MT (10)200-6, 11-12-73, and other chapter MT's subsequently issued.
All Part XI.	MT (11)500-6, 10-11-73 and other chapter MT's subsequently issued.
All Part XII.	This telegram.

Requests for manual and other material for which disclosure instructions have not been issued will continue to be promptly acknowledged and forwarded directly to disclosure staff, office of assistant commissioner (compliance), CP:D, as prescribed in Chapter (21)00 of IRM 1272 and Section 4 of MS 1(19)G-32, Amend. 4. This applies to all requests including those from requesters who may be subjects of collection, audit, intelligence or appellate activity or may be involved in a civil or criminal court action.

DONALD C. ALEXANDER,  
*Commissioner.*

[Reprint from Internal Revenue, Cumulative Bulletin, 1972-1 (Jan.-Jun.) Dept. of the Treasury—IRS]

#### SECTION 6103.—PUBLICITY OF RETURNS AND DISCLOSURE OF INFORMATION AS TO PERSONS FILING INCOME TAX RETURNS

*26 CFR 301.6103(a)-1: Inspection of returns by certain classes of persons and State and Federal Government establishments pursuant to Executive order.*

Inspection by certain classes of persons and State and Federal Government establishments of returns made in respect of certain taxes imposed by the Internal Revenue Code of 1954.

E.O. 11650

By virtue of the authority vested in me by section 6103(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6103(a)), it is hereby ordered that returns made in respect of the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32, subchapters B and C of chapter 33, subchapter B of chapter 37, and chapter 41 of such Code shall be open to inspection by certain classes of persons and State and Federal Government establishments in accordance and upon

compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury decision 6543 [C.B. 1961-1, 671], relating to inspection and use of returns by such classes of persons and State and Federal Government establishments, approved by the President on January 17, 1961, the amendments thereto approved by the President on April 4, 1963 [T.D. 6646, C.B. 1963-1, 299], and March 18, 1965 [T.D. 6809, C.B. 1965-1, 531], and the amendment thereto approved by me this date [T.D. 7162, below].

RICHARD NIXON

THE WHITE HOUSE,  
February 16, 1972.

(Filed in the Office of the Federal Register on February 16, 1972, 2:58 p.m., and published in the issue of the Federal Register for February 19, 1972, 37 F.R. 7339)

*26 CFR 301.6103(a)-1: Inspection of returns by certain classes of persons and State and Federal Government establishments pursuant to Executive order.*

T.D. 7162

TITLE 26.—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER F, PART 301.—  
PROCEDURE AND ADMINISTRATION

Inspection of returns by certain classes of persons and State and Federal Government establishments.

In order to clarify the definition of the term "return" under section 6103 of the Internal Revenue Code of 1954, the Regulations on Procedure and Administration (26 CFR Part 301) under such section are amended as follows:

Section 301.6103(a)-1 is amended by revising subparagraph (3)(i) of paragraph (a). The amended provision reads as follows:

§ 301.6103(a)-1 Inspection of returns by certain classes of persons and State and Federal Government establishments pursuant to Executive order.

(a) *In general.* \* \* \*

(3) *Terms used*—(i) *Return.* For purposes of section 6103(a), the term "return" includes—

(a) Information returns, schedules, lists, and other written statements filed by or on behalf of the taxpayer with the Internal Revenue Service which are designed to be supplemental to or become a part of the return, and

(b) Other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to the items included under (a) of this subdivision. The items listed in (b) of this subdivision may be open to inspection in any case where inspection of the return is authorized by section 6103(a) and these regulations only in the discretion of the Secretary or the Commissioner or the delegate of either. The above rules and procedures also apply to any reproductions or recordings by whatever means made of any such documents or portion thereof. A notice of acquisition filed under section 4917 is a return for purposes of section 6103. An application for exemption from income tax under section 501(a) filed by an organization described in section 501 (c) or (d) in order to establish its exemption is not a return for purposes of section 6103. For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104-1.

\* \* \* \* \*

Because this Treasury decision constitutes a general statement of policy and establishes rules of departmental practice and procedure, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

CHARLES E. WALKER  
*Acting Secretary of the Treasury.*

Approved: February 16, 1972.

RICHARD NIXON,  
*The White House.*

(Filed in the Office of the Federal Register on February 18, 1972, 8:51 a.m., and published in the issue of the Federal Register for February 19, 1972, 37 F.R. 3746).

## SUBPART G—RECORDS

## § 601.701. Publicity of Information.

(a) *General.* Effective July 4, 1967, section 552 of title 5 of the United States Code is amended to prescribe revised provisions regarding the publicizing of information by Federal agencies. Generally, such section divides agency information into three major categories and provides methods by which each category is to be made available to the public. The three major categories, for which the disclosure requirements of the Internal Revenue Service are set forth in § 601.702, are as follows:

- (1) Information required to be published in the Federal Register;
- (2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale; and
- (3) Information required to be made available to any member of the public upon specific request.

The revised provisions of section 552 are intended to protect, subject to specified safeguards, the right of the public to information. Section 552 is not authority to withhold information from Congress.

(b) *Exemptions*—(1) *In general.* Under 5 U.S.C. 552(b), the disclosure requirements of section 552 do not apply to certain matters described in nine specific exemptions, as follows:

(i) Matters specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(ii) Matters related solely to the internal personnel rules and practices of an agency, such as staff manuals or instructions, or parts thereof, which set forth guidelines, operating rules, or other criteria for officers or employees in auditing or inspection procedures, or in the selection or handling of cases, such as operational tactics, allowable tolerances, or criteria for the defense, prosecution, or settlement of cases;

(iii) Matters specifically exempted from disclosure by statute, as described in subparagraph (2) of this paragraph;

(iv) (a) Trade secrets and (b) commercial, financial, or other information, which is privileged or confidential and thus would not customarily be made public by the person from whom it is obtained, such as business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, personal correspondence, or matter which the agency has obligated itself in good faith not to disclose;

(v) Interagency or intraagency memorandums or letters which would not be available by law to a party in litigation with an agency, including communications (such as internal drafts, memorandums between officials or agencies, opinions and interpretations prepared by agency staff personnel or consultants for the use of the agency, and records of the deliberations of the agency or staff groups) which the agency has received from another agency, or which the agency generates, in the process of issuing an order, decision, ruling, or regulation, drafting proposed legislation, or otherwise carrying out its functions and responsibilities, if such communications would not routinely be available to such party through use of the discovery process;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of any officer or employee of an agency or of any other person;

(vii) Investigatory files compiled for any law enforcement purpose, including files prepared in connection with related Government litigation and adjudicative proceedings, except to the extent available by law to a party other than an agency;

(viii) Matters contained in or related to examination, operating, or condition reports prepared by, on behalf, of, or for the use of an agency responsible for the regulations or supervision of financial institutions; or

(ix) Geological and geophysical information and data, including maps, concerning wells, such as seismic reports and other exploratory findings of oil companies.

(2) *Matters specifically exempted from disclosure by statute.* For purposes of subparagraph (1)(iii) of this paragraph, statutory provisions which either specifically exempt certain matters from disclosure by officers or employees of the Internal Revenue Service or specifically provide for disclosure under appropriate circumstances include the following sections of the Code and the regulations thereunder:



(i) Section 4102, relating to inspection by certain State or local government officers of records with respect to taxes on petroleum products;

(ii) Section 6103, relating to publicity of certain returns and disclosure of information as to persons filing income tax returns;

(iii) Section 6104, relating to publicity of information required from certain exempt organizations and certain trusts;

(iv) Section 6106, relating to publicity of unemployment tax returns;

(v) Section 6108, relating to the publication of statistics of income; and

(vi) Section 7213, relating to penalties for unauthorized disclosure of information by Federal officers or employees or other persons.

(3) *Application of exemptions.* Even though an exemption described in subparagraph (1) of this paragraph may be fully applicable to a matter in a particular case, the Internal Revenue Service may, if not precluded by law, elect under the circumstances of that case not to apply the exemption to such matter. The fact that the exemption is not applied by the Service in that particular case has no precedential significance as to the application of the exemption to such matter in other cases but is merely an indication that in the particular case involved the Service finds no compelling necessity for applying the exemption to such matter.

### § 601.702. Publication and public inspection.

(a) *Publication in the Federal Register*—(1) *Requirement.* Subject to the application of the exemptions described in paragraph (b) of § 601.701 and subject to the limitations provided in subparagraph (2) of this paragraph, the Internal Revenue Service is required under 5 U.S.C. 552(a)(1) to separately state and currently publish in the FEDERAL REGISTER for the guidance of the public the following information:

(i) Description of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, from the Service;

(ii) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures which are available;

(iii) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(iv) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Service; and

(v) Each amendment, revision, or repeal of matters referred to in subdivisions (i) through (iv) of this subparagraph.

Pursuant to the foregoing requirements, the Commissioner publishes in the FEDERAL REGISTER from time to time a statement, which is not codified in this chapter, on the organization and functions of the Internal Revenue Service, and such amendments as are needed to keep the statement on a current basis. In addition, there are published in the FEDERAL REGISTER the rules set forth in this part (Statement of Procedural Rules), such as those in Subpart E of this part, relating to conference and practice requirements of the Internal Revenue Service; the regulations in Part 301 of this chapter (Procedure and Administration Regulations); and the various substantive regulations under the Internal Revenue Code of 1954, such as the regulations in Part 1 of this chapter (Income Tax Regulations), in Part 20 of this chapter (Estate Tax Regulations) and, in Part 31 of this chapter (Employment Tax Regulations).

(2) *Limitations*—(i) *Incorporation by reference in the Federal Register.* Matter which is reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the FEDERAL REGISTER for purposes of subparagraph (1) of this paragraph when it is incorporated by reference therein with the approval of the Director of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the Internal Revenue Service may not be incorporated in the FEDERAL REGISTER by reference. Matter may be incorporated by reference in the FEDERAL REGISTER only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20.

(ii) *Effect of failure to publish.* Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the FEDERAL REGISTER, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision (i) of this subparagraph. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.

(b) *Public inspection and copying*—(1) *In general.* Subject to the application of the exemptions described in paragraph (b) of § 601.701, the Internal Revenue Service is required under 5 U.S.C. 552(a) (2) to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information:

(i) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases;

(ii) Those statements of policy and interpretations which have been adopted by the Internal Revenue Service but are not published in the FEDERAL REGISTER; and

(iii) Its administrative staff manuals and instructions to staff that affect a member of the public.

The Internal Revenue Service is also required by 5 U.S.C. 552(a) (2) to maintain and make available for public inspection and copying current indexes identifying any matter described in subdivisions (i) through (iii) of this subparagraph which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. No matter described in subdivisions (i) through (iii) of this subparagraph which is required by this subparagraph to be made available for public inspection or published may be relied upon, used, or cited as precedent by the Internal Revenue Service against a party other than an agency unless such party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection, or published, as provided by this subparagraph. This subparagraph applies only to matters which have precedential significance. It does not apply, for example, to administrative manuals on property or fiscal accounting, vehicle maintenance, personnel administration, and similar proprietary functions of the Internal Revenue Service. Nor does it apply to any ruling or advisory interpretation which is issued to a taxpayer on a particular transaction or set of facts and applied only to that transaction or set of facts. This subparagraph does not apply to matters which have been made available pursuant to paragraph (a) of this section.

(2) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the Internal Revenue Service will, in accordance with 5 U.S.C. 552(a) (2), delete identifying details contained in any matter described in subparagraph (1) (i) through (iii) of this paragraph before making such matter available for inspection or publishing it. However, in every case where identifying details are so deleted, the justification for the deletion must be explained in writing. The written justification for deletion will be placed as a preamble to the document from which the identifying details have been deleted, except in the case of any matter which is published in the Internal Revenue Bulletin. An introductory statement will be placed in each Internal Revenue Bulletin providing that identifying details, including the names and addresses of persons involved, and information of a confidential nature are deleted to prevent unwarranted invasions of personal privacy and to comply with statutory provisions, such as section 7213 and 18 U.S.C. 1905, dealing with disclosure of information obtained from members of the public.

(3) *Public reading rooms*—(i) *In general.* The National Office and each regional office of the Internal Revenue Service will provide a reading room or reading area where the matters described in subparagraph (1) (i) through (iii) of this paragraph which are required by such subparagraph to be made available for public inspection or published, and the current indexes to such matters, will be made available to the public for inspection and copying. In addition, the reading rooms will contain other matters determined to be helpful for the guidance of the public, including a complete set of the rules and regulations (except those pertaining to alcohol, tobacco, firearms, and explosives) contained in this title, any internal revenue matters which may be incorporated by refer-

ence in the FEDERAL REGISTER pursuant to paragraph (a) (2) (i) of this section, a set of Cumulative Bulletins, and copies of various Internal Revenue Service publications, such as the description of forms or publications contained in Publication No. 481. Fees will not be charged for the use of the materials in the reading rooms, but fees will be charged for copying and certification services, as provided in subdivision (ii) of this subparagraph. The public will not be allowed to remove any record from a reading room.

(ii) *Addresses of public reading rooms.* The addresses of the reading rooms are as follows:

#### NATIONAL OFFICE

Mail address: Director, Public Information Division, Internal Revenue Service,  
1111 Constitution Avenue NW., Washington, D.C. 20224.  
Location: Same as mail address.

#### NORTH ATLANTIC REGION

Mail address: Regional Public Information Officer, Room 1102, 90 Church Street,  
New York, N.Y. 10007.  
Location: Same as mail address.

#### MID-ATLANTIC REGION

Mail address: Regional Public Information Officer, Post Office Box 12805, Phila-  
delphia, Pa. 19108.  
Location: 401 North Broad Street.

#### SOUTHEAST REGION

Mail address: Regional Public Information Officer, Post Office Box 926, Atlanta,  
Ga. 30301.  
Location: Federal Office Buidling, 275 Peachtree Street.

#### MIDWEST REGION

Mail address: Regional Public Information Officer, 17 North Dearborn Street,  
Chicago, Ill. 60602.  
Location: Same as mail address.

#### CENTRAL REGION

Mail address: Regional Public Information Officer, Room 7106, Federal Office  
Building, 550 Main Street, Cincinnati, Ohio 45202.  
Location: Same as mail address.

#### SOUTHWEST REGION

Mail address: Regional Public Information Officer, 1114 Commerce Street, Dallas,  
Tex. 75202.  
Location: Same as mail address.

#### WESTERN REGION

Mail address: Regional Public Information Officer, Flood Building, 870 Market  
Street, San Francisco, Calif. 94102.  
Location: Same as mail address.

(iii) *Copying facilities.* The National Office and each regional office will provide facilities whereby a person may obtain copies of material which is on the shelves of the reading room. Certification services with respect to copies will also be provided. The fees in respect of material on the shelves of the reading rooms are as follows:

Photocopies; each page-----	\$0. 10
Certification of photocopies by appropriate official; each certification-----	1. 00
Sale of unpriced printed material; each 25 pages or fraction thereof-----	. 25
Minimum charge applicable when one or more of the above charges is assessed -----	1. 00

Generally, forms and instructions described in § 601.602 which may be obtained from district directors will not be available in the reading rooms. However, where such forms or instructions are available for distribution in the reading rooms, the fee listed in this subdivision for the sale of unpriced printed material will not apply. While certain relevant publications which are available for sale through the Government Printing Office will be placed on the shelves of the reading rooms, such publications will not be available for sale in the reading rooms. Persons desiring to purchase such publications, for example, Internal Revenue Bulletins and Cumulative Bulletins, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, copies of pages of such publications on the reading room shelves may be obtained at the reading rooms in accordance with the schedule of fees set forth in this subdivision.

(iv) *Inability to use public reading rooms.* If a person is unable or unwilling to visit a reading room in person but wishes to inspect identifiable reading room material, he may request permission to inspect such material at any office of the Internal Revenue Service. To the extent that requested material is available for inspection at the reading rooms and is also readily available for inspection at the office where the request is made, such material will promptly be made available for inspection at such office to the person making the request for inspection and, where facilities are available, for copying in accordance with the schedule of fees prescribed by subdivision (iii) of this subparagraph. Copies of the requested material may also be mailed to such person by such office upon request. If the requested reading room material is not readily available for inspection at the office where the request is made, then the request will be referred by such office to one of the reading rooms of the Internal Revenue Service.

(c) *Specific requests for other identifiable records*—(1) *In general.* Subject to the application of the exemptions described in paragraph (b) of § 601.701, the Internal Revenue Service is required under 5 U.S.C. 552 (a) (3) to make identifiable records, other than those made available pursuant to paragraphs (a) and (b) of this section, promptly available to any person upon request. The request for records under section 552(a) (3) must be made in accordance with the rules set forth in this paragraph. This paragraph applies only to records in being which are in the possession or control of the Internal Revenue Service. Where a record is in the possession or control of the Internal Revenue Service is the paramount or exclusive concern of another agency, the request for such record will be transferred to that agency, and the requester notified to that effect, to insure that the determination to disclose or withhold the record will be made by that agency. In applying this paragraph, the Internal Revenue Service will not compile a record pursuant to a request, or procure a record from sources outside the Service.

(2) *Form of request.* The request for records must be in writing and signed by the person making the request. The request is required to identify the requested records in accordance with subparagraph (4) of this paragraph. The request must set forth the address where the person making the request desires to be notified of the determination by the Internal Revenue Service as to whether the request will be granted. If the requester desires to make the inspection in an office other than the office to which the request is delivered or mailed, the request should designate the office of the Internal Revenue Service where inspection is desired. Where the person making the request desires to have a copy of the requested records sent to him without first inspecting such records, his request should so state.

(3) *Time and place for making request.* The request for records may be made at any office of the Internal Revenue Service. A request delivered to an office in person must be delivered during the regular office hours of that office. The person making the request should allow a reasonable period of time for processing the request.

(4) *Identification of records.* The request for records must describe the records in reasonably sufficient detail to enable personnel of the Internal Revenue Service to locate the records. While no specific formula for adequate identification of a record may be established, it will generally suffice if the requester gives the name, subject matter, and, if known, the date and location of the requested record. However, the person making the request is advised to furnish the Internal Revenue Service with any additional information which will more clearly identify the requested records, since he has the burden of properly identifying them. The identification requirement will not be used by officers or employees of the In-

ternal Revenue Service as a device for improperly withholding records from the public.

(5) *Fees.* A schedule of fees for the services and costs required of the Internal Revenue Service in locating, making available, copying, and certifying records pursuant to this paragraph is as follows:

Record search; each hour or fraction thereof-----	\$3.50
Photocopies; each page-----	.10
Certification of photocopies by appropriate official; each certification-----	1.00
Minimum charge with respect to photocopies-----	1.00

If the Internal Revenue Service estimates that the total fees for costs incurred in complying with the request will amount to \$50 or more the person making the request may be required to enter into a contract for the payment of actual fees with respect to the request before the Service will undertake actions necessary to comply with the request.

(6) *Processing a request*—(i) *In general.* The person making a request will be promptly advised in writing that the request has been received, that action is being taken thereon, and that he will be notified in writing of the determination as to whether the request is granted. If the request does not sufficiently identify a record, the person making the request will be promptly advised of such fact and notified that a more detailed description of the record is required by the Internal Revenue Service in order to proceed with the request.

(ii) *Determination by National Office.* Except in a case described in subdivision (iii) of this subparagraph, a request sufficiently identifying records will be immediately transmitted to the Assistant Commissioner (Compliance), Attention: CP:D for prompt consideration. A copy of the requested records or a description thereof will also be transmitted to the Assistant Commissioner (Compliance) for consideration in connection with the request. The Assistant Commissioner (Compliance) will notify the requester in writing of his determination with respect to the request.

(iii) *Determination by a field office.* Where disclosure authorization with respect to the requested records has been delegated to an officer or employee of the Internal Revenue Service other than the Assistant Commissioner (Compliance), such other officer or employee will make the determination as to whether the request for records should be granted or denied and will notify the requester in writing of his determination with respect to the request.

(7) *Granting of request.* If it is determined that the request is to be granted, the person making the request will be notified in writing of the determination, of the fees involved in complying with the request, and of the locations where such fees are payable. Upon receipt by the Internal Revenue Service of the fees stated in its reply, the person making the request will be promptly advised, in writing, of the time and place where inspection may be made; or, if he has requested that a copy of the records be sent to him without first inspecting the records or if it has been necessary to reproduce the records in order to provide for inspection, a copy of the records will be mailed to him for his retention. In the usual case, the records will be made available for inspection at the office of the Internal Revenue Service where the request was made. However, if the person making the request has expressed a desire to inspect the records at an office of the Service other than the office where the request was made, every reasonable effort will be made to comply with the request. Records will be made available for inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request will not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished to him upon payment of the established fees prescribed by subparagraph (5) of this paragraph. Prepayment of fees is not required where the total fees with respect to the request are \$5 or less and the request is filled by mail.

(8) *Denial of request.* If it is determined that the request for records should be denied, the person making the request will be notified of such determination by mail. The letter of notification will specify the city or other location where the requested records are situated, contain a brief statement of the grounds for

denial, and advise the requester of his right to appeal to the Commissioner in accordance with subparagraph (9) of this paragraph.

(9) *Administrative appeal.* At any time within 30 days after the date of the letter of notification described in subparagraph (8) of this paragraph, the person making the request may file an appeal to the Commissioner. The appeal must be in the form of a statement signed by the appellant and mailed to the Commissioner of Internal Revenue, 1111 Constitution Avenue NW., Washington, D.C. 20224. The statement must contain the following information:

- (i) The appellant's name and address,
- (ii) The identification of the records requested,
- (iii) The date of the request and the date of the letter denying the request, and
- (iv) A request that the Commissioner consider the denial.

The appeal will be promptly considered by the Commissioner and the request either granted or denied by the Commissioner or referred by him to the Secretary for determination. The appellant will be notified of the determination by mail, and such determination shall be final.

(10) *Judicial review.* If the request is denied upon appeal pursuant to subparagraph (9) of this paragraph, or if no determination is made on the appeal within 30 days after filing, the appellant may commence an action in a U.S. district court pursuant to 5 U.S.C. 552(a)(3). The statute authorizes an action only against the agency. With respect to records of the Internal Revenue Service, the agency is the Internal Revenue Service, not an officer or employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Where provided in such Rules, delivery of process upon the Internal Revenue Service must be directed to the Commissioner of Internal Revenue: Attention: CC:OP:OS, 1111 Constitution Avenue NW., Washington, D.C. 20224. The district court will determine the matter de novo, and the burden will be upon the Internal Revenue Service to sustain its action in not making the requested records available.

(d) *Rules for disclosure of certain specified matters—(1) Inspection of certain tax returns.* The inspection of certain returns is governed by the provisions of the internal revenue laws and rules promulgated by the President or by the Secretary of the Treasury and approved by the President pursuant to such provisions. See section 6103 and the regulations thereunder in Part 301 of this chapter (Procedure and Administration Regulations).

(2) *Information as to persons filing income tax returns.* Information as to whether any person has filed an income tax return for a particular taxable year will be furnished to an inquirer. See section 6103(f).

(3) *Record of seizure and sale of real estate.* Record 21, "Record of seizure and sale of real estate", is open for public inspection in offices of district directors and copies are furnished upon application, as provided in § 301.9000-1(e) of this chapter. However, Record 21 does not list real estate seized for forfeiture under the internal revenue laws (see sec. 7302).

(4) *Public list of employers making returns under the Federal Unemployment Tax Act.* Information as to whether an employer has made an annual return on Form 940 under the Federal Unemployment Tax Act (chapter 23 of the Code) will be furnished to an inquirer as provided in §§ 301.6103(f)-1 and 301.6106-1 of this chapter. See sections 6103(f) and 6106.

(5) *Information returns of certain tax-exempt organizations and certain trusts.* Information furnished on Form 990, Form 1041-A, and on the Annual Report by private foundations pursuant to sections 6033, 6034, and 6056, which are filed after December 31, 1969, is available for public inspection for a 4-year period. This information shall be available for public inspection in the office of the Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, as well as in the office of a district director or Director of the Mid-Atlantic Regional Service Center. See section 6104(b) and § 301.6104-2 of this chapter.

(6) *Applications of certain organizations for tax exemption.* Applications, and certain papers submitted in support of such applications, filed by organizations described in section 501(c) or (d) and determined to be exempt from taxation under section 501(a) are open to public inspection the Office of the Director, Public Information Division, Internal Revenue Service, 1111 Constitution

Avenue NW., Washington D.C. 20224. Copies of such applications filed after September 2, 1958, are open to public inspection in the offices of district directors. See section 6104(a) and § 301.6104-1 of this chapter.

(7) *Accepted offers in compromise*—(i) *Income, profits, estate, gift tax.* For a period of 1 year, a copy of the Abstract and Statement for each accepted offer in compromise in respect of income, profits, capital stock, estate, or gift tax liability is made available for inspection (a) in the Office of the Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, when the offer covers a liability of \$5,000 and over, and (b) in the office of the appropriate district director when the offer covers a liability of less than \$5,000. See 26 CFR (1939) 458.313 (17 F.R. 7688); § 301.6103(a)-1(j) of this chapter; and section 10 of Rev. Proc. 64-44 (C.B. 1964-2. 974.979).

Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, or apparatus, or confidential data or any other matter within the prohibition of 18 U.S.C. 1905.

(8) *Publication of statistics of income.* Statistics with respect to the operation of the income tax laws are published annually in accordance with section 6108 and § 301.6108-1 of this chapter.

(9) *Comments received in response to a notice of proposed rulemaking.* Written comments received in response to a notice of proposed rulemaking may be inspected by any person upon compliance with the provisions of this subparagraph (9) unless such comments are exempt from disclosure under law. Comments which may be inspected are located in the Office of the Chief Counsel, Legislation and Regulations Division, Technical Section, Room 4317, 1111 Constitution Avenue, Washington, D.C. 20224. The request to inspect comments must be in writing and signed by the person making the request and should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224. Upon delivery of such a written request to the place where the comments are located during the regular business hours of that office, the person making the request may inspect those comments (or portions thereof) which are not exempt from disclosure. Copies of comments (or portions thereof) which are not exempt from disclosure may be obtained by a written request addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224. The person making the request for copies should allow a reasonable time for processing the request. The provisions of paragraph (c) (5) of this section, relating to fees, shall apply with respect to request made in accordance with this subparagraph. The provisions of this subparagraph shall apply in the case of requests for the inspection of, or copies of comments that are made after April 29, 1973, regardless of when the comments were submitted or regardless of when the related notice of proposed rulemaking was published in the FEDERAL REGISTER.

(e) *Other disclosure procedures.* For procedure to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for certain internal revenue records or information the disclosure procedure for which is not covered by this section, see § 301.9000-1 of this chapter.

#### FREEDOM OF INFORMATION ACT REQUESTS

The Internal Revenue Service will grant a request under the Freedom of Information Act (5 U.S.C. 552) for a record which we are not prohibited from disclosing by law or regulations unless:

(a) the record is exempt from required disclosure under the Freedom of Information Act, and

(b) public knowledge of the information contained in such record would significantly impede or nullify IRS actions in carrying out a responsibility or function, or would constitute an unwarranted invasion of personal privacy.

The administrative cost and impact on operations involved in furnishing the requested record(s) shall not be a material factor in deciding to deny a request unless such cost or impact would be so substantial as to seriously impair IRS operations.

#### ACCOUNTING AND FISCAL PROCEDURE

##### 46(11).3 COLLECTION PROCEDURES

(1) The Fiscal Division of the IRS Data Center will contact debtors to request payment of amounts due and to make arrangements for methods of repayment (payment in full, cash installments, payroll deductions, etc.).

(2) In cases where the Data Center has difficulty in locating a debtor or in obtaining his cooperation in making satisfactory arrangements to repay, the Fiscal Management office of the region concerned may be requested to render assistance. Upon request the region or National Office will try to contact debtors and request payments. Several attempts should be made within six months of the notification from the Data Center. When the debtor is unresponsive, the Data Center should be notified and given copies of the correspondence for their files.

(3) Fiscal Management may refer claims to the appropriate Regional Counsel or Chief Counsel for advice on the legality of claims and may request assistance in collection action.

(4) The procedures above may not apply to an IRS employee's case, if his case meets the conditions for waiver of claims.

(5) Fiscal Management will refer cases to Inspection when there are indications of fraud, misrepresentation, or misconduct of employees.

#### 46(11).4 UNCOLLECTIBLE ITEMS

(1) Where reasonable efforts to collect a valid claim are not successful within six months after the receivable was established in the accounts, or from the date of the last payment received on the claim, and GAO collection procedure guidelines have been followed, Regional Fiscal Management Officers; Chiefs, Fiscal Management Branches; the Chief, Accounting Branch, National Office; or Chief, Fiscal Division, IRS Data Center, may determine the account to be administratively uncollectible. Uncollectible debts over \$50 must be referred to Chief or Regional Counsel, as appropriate, for further action, and may be written off only upon Counsel's recommendation. (See (5) below.)

(2) Accounting control on motor vehicle accident claims will be maintained until advice from Facilities Management is received, regarding final disposition.

(3) Uncollectible claims in which the unpaid amount is \$50 or less and otherwise come under the provisions of the Federal Claims Collection Act of 1966 may be terminated without recommendation from Chief Counsel; collection action on such small claims may also be abbreviated when the cost of further collection effort will exceed the possible revenue and the debt is otherwise deemed uncollectible.

(4) Those debts amounting to \$400 or more which are referred to GAO should be submitted not later than one year prior to the expiration of the period within which the suit is authorized to be filed.

(5) Uncollectible accounts of \$20,000 or more will be referred to GAO or the Department of Justice for final disposition. Claims of any amount which are referred to the Department of Justice for advice or litigation will remain under accounting control until advice is received that the Department of Justice has closed its file in the matter. Claims referred to GAO for advice or further collection will remain under accounting control until GAO accepts the claim for further action.

(6) Fiscal Management may refer administratively uncollectible claims of \$400 or more, which cannot be written off, to GAO in accordance with 4 GAO, Chapter 8, Section 56.7. Claims should be submitted to Counsel for coordination, and referral by them to the Department of Justice.

(7) Referrals of debt claims to either GAO or the Department of Justice should report the expiration date of each period for filing suit to assure prompt and orderly processing of the claims. In those cases where partial payments or written acknowledgments of the debts have been received, the report should include the date of the last payment or written acknowledgement in each case.

#### 46(12) RECEIPTS FROM USER CHARGES UNDER FREEDOM OF INFORMATION ACT

(1) Receipts from user charges under the Freedom of Information Act shall be accounted for in each region and the National Office. Collections in a district office or service center will be deposited by the cashier as a courtesy deposit for the regional Fiscal Management office. In small offices where there is no cashier, payments will be mailed to the appropriate Fiscal Management office for deposit.

(2) The general ledger entry to record the receipts is as follows:

Dr. 107—General Fund Receipts Deposited (20-2419).

Cr. 630—General Fund Receipts

(3) Appropriate steps should be taken to safeguard monies received and deposits should be made regularly.



(4) Each regional and National Office will report the total amount collected for charges during the fiscal year.

(a) General ledger account 107(20-2419) will be analyzed to determine the amount representing user charges under the Freedom of Information Act. (There should be few, if any, other types of receipts deposited to this account.)

(b) In preparing the Supporting Schedule to the General Ledger Trial Balance (Form 2228-A) for the month of June, use a footnote to identify the amount in Account 107(20-2419) representing user charges.

(c) The National Office will summarize the information reported to determine total collections for the Service. See Administrative Circular 67 for reporting requirements.

## (10)00 PUBLIC RELATIONS

### (10)10 RESPONSIBILITY

Supervisors have the responsibility to promote the good will, respect, and cooperation of taxpayers and representatives who have contact with Appellate. Further, every effort should be made to preserve the reputation for integrity and fairmindedness that is the cornerstone of Appellate procedure. An error in judgment in this area not only embarrasses the Service; it endangers the entire voluntary compliance system upon which our revenues depend. Personal contacts, conversations, and correspondence with taxpayers must be conducted with these basic principles in mind. This chapter reviews the duties and responsibilities of supervisors in situations where it is important to consider taxpayer relations.

### (10)20 ISSUANCE OF INFORMATION

#### (10)21 *Press Releases and Statements*

(1) The Service has long been concerned with the unfavorable publicity it sometimes receives as the result of the settlement of certain types of United States Tax Court cases. Also, there is the problem of answering inquiries made by members of the press when petitions are filed by persons or corporations of national or local reputation. To ensure better public relations on Tax Court cases, the Chief Counsel's office has issued instructions to its regional offices which set forth specific procedure to be followed under various circumstances.

(2) It is the responsibility of Regional Counsel to prepare and release press statements in docketed cases; therefore, all requests for information concerning these cases should be referred to Regional Counsel. There is no restriction on cooperating with Regional Counsel, upon request, in preparing or reviewing a proposed statement. The advice and comments given by Appellate supervisors do not limit the ultimate responsibility of Regional Counsel to release only those facts permitted by the disclosure statutes.

(3) Appellate is not authorized to release information concerning nondocketed cases under its jurisdiction. This prohibition extends to the name of the case itself. In other words, an inquiry from a newspaper trying to locate a nondocketed case must be handled so that no information is disclosed. If an explanation is required, the reasons for the denial should be carefully and courteously given.

(4) Supervisors should be familiar with IRM 1(19)60 which establishes requirements and procedures for forwarding news clippings to appropriate Service officials so they may be informed of public reaction to Service activities. Depending on regional practices, each branch office may designate one or more employees to read the local papers and magazines with this purpose in mind.

#### (10)22 *Information of a Confidential Nature*

(1) Disclosure of information concerning status of tax cases is limited by law. Section 7213 of the Internal Revenue Code of 1954 makes it illegal to disclose specific information from returns and related documents. In addition, the Service has a long-standing policy of protecting the confidential relationship between the taxpayer and the Government. The unauthorized release of Internal Management Documents also is prohibited by IRM 1240. Requests from United States attorneys for copies of returns are governed by the instructions contained in (10)30 and (11)00 of IRM 1272, Disclosure of Official Information Handbook.

(2) Appellate supervisors should be familiar with the foregoing restrictions, as well as those concerning press releases. Supervisors have the further responsibility for instructing their employees about these restrictions and establishing adequate controls to prevent disclosure of information of a confidential nature. For example, clerical and secretarial employees should be directed to refer all requests for information from persons other than Service personnel to their immediate supervisors. Particular care should be exercised in considering requests from individuals who identify themselves as authorized attorneys or agents of a taxpayer. The safe practice is to defer the matter as courteously as possible until it is clearly established that the individual is authorized to receive the information requested.

#### (10)23 *Freedom of Information Act*

(1) Public Laws 89-487 and 90-23, codified 5 U.S.C. 552, commonly called the Freedom of Information Act, revised section 3 of the Administrative Procedures Act in various respects. One principal revision required that certain materials be made available for public inspection and copying. To provide such services, public reading rooms were established at each office of a Regional Commissioner and at the National Office, staffed by Public Information Division personnel.

(2) Manual Supplement 1(19)G-32, Amend. 4, dated February 27, 1970, provides that all IR Manual material and Commissioner's Delegation Orders (other than such material or Orders as are printed in the Internal Revenue Bulletin or Federal Register) shall be available to the public only upon specific request approved by authorized officials. It also provides for removal of all Manual material and Orders in public reading rooms. Manual Supplement 1(19)G-32 and amendments contain internal operating instructions.

(3) All requests for IRM Part VIII material and related Handbooks (which have been classified "Official Use Only") will be forwarded to Disclosure Staff, Office of Assistant Commissioner (Compliance), CP:D. Appellate branch offices should furnish reasonable assistance in helping members of the public to properly identify Manual material they wish to request from the National Office.

#### (11)2(10)0 IMPLEMENTING THE "FREEDOM OF INFORMATION ACT" WITHIN TECHNICAL

##### (11)2(10)1 *General*

(1) Section 552 of Title 5, U.S.C., as amended by the "Freedom of Information Act" (FOIA), provides for making available to the public, information maintained by agencies in the Executive Branch, unless such information comes within specific categories of matters that are exempt from public disclosure.

(2) Generally, Section 552 divides agency information into three major categories and provides methods by which each category is to be made available to the public. The three categories are:

(a) Information required to be published in the Federal Register—Section 552(a) (1);

(b) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale—Section 552(a) (2); and

(c) Information required to be made available to any member of the public upon specific request—Section 552(a) (3).

(3) Sections 601.701-702, Statement of Procedural Rules, and IRM 1(19)00 and related Manual Supplements set forth responsibilities and procedures for Servicewide implementation of FOIA. Also, see (21)00 of IRM 51(10)0, Disclosure of Official Information Handbook.

##### (11)2(10)2 *Responsibilities*

(1) Technical's responsibilities with respect to implementing the provisions of:

(a) Section 552(a) (1), dealing with publication in the Federal Register, are carried out by preparing and transmitting to the Legislation and Regulations Division (CC:LR) proposed additions to or revisions in the portions of the Statement of Procedural Rules relating to Technical's functional areas. The Miscellaneous and Special Provisions Tax Division coordinates and consolidates Technical's proposed amendments to the Statement of Procedural Rules. See IRM (11)350.

(b) Section 552(a)(2), dealing with public inspection and copying, are carried out by publishing Revenue Rulings and Revenue Procedures in the Internal Revenue Bulletin.

(c) Section 552(a)(3), dealing with specific requests for other identifiable records, are carried out by determining whether the requested record has been sufficiently identified and, if it has, whether the record is:

1. Exempt in its entirety and not to be disclosed to the requester;
2. Not exempt in any respect and to be disclosed to the requester;
3. Not exempt in its entirety but contains exempt material that should be deleted before disclosing to the requester; or
4. Exempt but elect not to apply exemption.

(2) The Chief, Manual and Field Conference Section, Technical Services Branch (T:PS:T:M), is responsible for coordinating actions within Technical on matters involving FOIA.

### *(11)2(10)3 Requests by Public for Technical's Records*

Written requests under FOIA for inspection or copying of Technical's records are forwarded without acknowledgment to the Disclosure Staff, Office of Assistant Commissioner (Compliance), for consideration and reply. Also, persons making oral requests, whether in person or by telephone, for any record or for information regarding FOIA are referred to that branch.

### *(11)2(10)4 requests by disclosure staff*

(1) Requests by the Disclosure Staff for Technical's assistance in making determinations as to whether records have been sufficiently identified under FOIA are coordinated by the Chief, T:PS:T:M.

(2) The Chief, T:PS:T:M:

(a) Makes a determination as to whether the record has been sufficiently identified, following, where necessary, consultation with the office having custody of the record, and, whenever he deems it necessary or appropriate, clears such determination with the office of the Assistant Commissioner (Technical);

(b) Coordinates the handling of a request for Technical's views on classification of records requested under FOIA;

(c) When necessary, obtains the requested record or a copy thereof;

(d) Makes a tentative determination of the classification (exempt, partially exempt, not exempt from disclosure, or exempt but elect not to apply exemption) of the requested record, setting forth the authority or reasons for the classification, as necessary or appropriate; and

(e) Forwards the determination and any documents relating thereto which he believes necessary for review of his determination to the Division Director or Directors concerned.

(3) After review by the Division or Divisions concerned, the file is returned to the Chief, T:PS:T:M, with their concurrence or comments on the determination.

(4) In event there are differences of opinion within Technical regarding the classification that cannot be resolved by the Chief, T:PS:T:M, he refers the matter to the Office of the Assistant Commissioner (Technical) for resolution.

(5) The classification decided on is cleared with the Office of the Assistant Commissioner (Technical) and the Disclosure Staff advised.

(6) Replies are prepared by the Disclosure Staff for the signature of the Assistant Commissioner (Compliance) and routed through Technical for clearance. The Chief, T:PS:T:M, secures the necessary review and approval. After signature, the Disclosure Staff forwards a copy of the reply to him.

(7) Where Technical's administrative file that contains the requested record has been identified, copies of the final reply, of the incoming correspondence, and related memorandums are forwarded to the Records Section, Technical Services Branch, for association with such file.

## **(21)00 FREEDOM OF INFORMATION**

### **(21)10 BACKGROUND**

Comprehensive instructions with respect to disclosures required by 5 U.S.C. 552 (Freedom of Information Act) are contained in Manual Supplement

1(19)G-32, and Amends. 1 through 4, thereto, dated May 25, 1967, June 27, 1967, August 25, 1967, October 25, 1967, and February 27, 1970, respectively. This Chapter deals primarily with requests which, pursuant to section (a)(3) of the Act are for identifiable records which are not required to be published or otherwise be made available under sections (a)(1) or (a)(2) of the Act. (See section 601.702(c) of the Regulations.)

#### (21) 20 GENERAL

Section (a)(3) of the Act states: "(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way."

#### (21) 30 PROCEDURES TO BE FOLLOWED

(1) Regional and district offices or National Office components receiving requests for records or material for which disclosure instructions have not been previously issued (e.g., this Handbook, IRM 1240, Delegation Orders 70, 83 and 86, etc.), and which have not been made available in the reading rooms should promptly acknowledge receipt of the request and notify the requester that his request has been forwarded for the attention of the Disclosure Staff, Office of Assistant Commissioner (Compliance), CP:D, for consideration, and that he will receive written notice of the decision reached.

(2) Regional and district officers which deny a request, pursuant to disclose instructions issued by the Commissioner must advise the inquirer that he may appeal the decision to the Commissioner, Attention: CP:D. Please ensure that these appellate rights are made known to inquirers in any cases where, pursuant to authorizations cited in (1) above, a denial is issued.

(3) Field offices are to immediately forward such requests, including a copy of the record, if available, or a description if the record is too voluminous for copying. The district office should transmit a copy of the request and related file to the Regional Commissioner for information.

(4) The Disclosure Staff, after obtaining the concurrence of the Division Directors involved, will promptly prepare a reply for the *signature* of the Assistant Commissioner (Compliance) advising the requester whether or not disclosure is authorized (with proper notice of his appeal rights, if denied), with a copy being sent to the Regional Commissioner and District Director involved. Replies will advise the requester of the rate of charge for searching and reproduction costs for the record requested (when the request is being granted) and will be routed through the National Office components involved in the request, for review and concurrence.

(5) Any appeal by the taxpayer from the decision of the Assistant Commissioner (Compliance) will be promptly considered, and granted or denied, by the Commissioner, or referred to the Secretary.

#### (21) 40 CHARGES

Established charges for records searches and for material furnished in response to requests under the Freedom of Information Act are contained in 26 CFR 601.702(b)(3)(iii) and (c)(5). Form 4313, Special Information Services Invoice, is designed for use as a billing document. No charges are prescribed for billing requests for other Federal agencies or for resources required to determine whether requested records are exempt or nonexempt under this Act.

(21)50 INJUNCTION SUITS UNDER FREEDOM OF INFORMATION ACT  
5 U.S.C. 552

(21)51 RESPONSIBILITY OF GENERAL LITIGATION DIVISION, CHIEF COUNSEL

The General Litigation Division, Chief Counsel, National Office, has the responsibility within the Internal Revenue Service for the handling of legal problems arising under the Act and will handle all matters in litigation under subsection (a) (3) with the Department of Justice. The General Litigation Division will coordinate with the interested National Office or field components of the Service.

(21)52 EXPEDITIOUS HANDLING

(1) As the Act calls for expeditious handling by Federal district courts of injunction actions under subsection (a) (3), it is important that the General Litigation Division be informed immediately of any such action, accompanied by appropriate factual material, or if such material is not then available, at the earliest possible date. Since the action will involve an injunction proceeding, it is possible that the Government may be held to a short period for filing an answer with the court.

(2) Regional and district offices or National Office components receiving summonses, complaints, pleadings, or any other information regardless of source, which indicate that a suit has been filed under the Act should forward the same promptly, without awaiting a request, with a covering memorandum to the Chief Counsel, National Office, Attention: General Litigation Division, CC:GL.

(3) When time is of the essence, Regional Commissioners, Regional Counsel, Regional Inspectors, District Directors, and Service Center Directors may authorize direct referrals by employees to be followed up by the more formal procedures set forth herein.

(4) In the event of any urgency, or if there is an indication that less than two weeks remain in which to file an answer to any pleading, a teletype should be sent or a telephone call made from the office receiving the pleading to the General Litigation Division.

(21)53 INFORMATION REQUIRED

(1) Information furnished to the General Litigation Division in the covering memorandum, or as soon as possible after forwarding the summons or pleading should include the following:

- (a) The title of the case and the docket number.
- (b) Date and time of service of the summons and complaint or other pleading and upon whom served.
- (c) Location of the Federal district court.
- (d) Date answer is to be filed in the court.
- (e) Details of any request made by the plaintiff for the records requested, how handled, including date sent to the Disclosure Staff, under the provisions of this Chapter.
- (f) A copy of the record demanded by the pleading or a description if the record is too voluminous for copying.
- (g) Whether there are any open or pending civil or criminal aspects of cases relating to the taxpayer's request.
- (h) Whether the record sought would identify informants; whether it was obtained in confidence; or whether for other reasons it should not be made public.
- (i) Names of Service personnel familiar with the demand and any preceding request.
- (j) Name and telephone number of the person from whom additional information can be requested.

(21)54 LIMITATIONS

Nothing herein is intended to change or modify instructions as to the authority of the Commissioner to make the final Service decision as to disclosure of information or furnishing of testimony in response to a subpoena or other court order.

MANUAL SUPPLEMENT—U.S. TREASURY DEPARTMENT, INTERNAL REVENUE  
SERVICE

RELEASE OF IRS AND OTHER TELEPHONE DIRECTORIES TO THE PUBLIC

*Section 1. Purpose*

This Supplement revises the procedure for providing IRS telephone directories, other, or abridged telephone lists to the public.

*Section 2. Background*

Service offices often receive requests for local IRS telephone directories from tax practitioners and other members of the public. We have been complying with these requests by providing abridged telephone directories. These telephone listings should contain only the most frequently called telephone extensions by tax practitioners or other members of the public. The telephone extensions listed should usually be limited to those giving the caller general tax information since on a case related tax matter the taxpayer or his representative has already received through correspondence or personal contact the name of the IRS employee or organization to call for additional information. District Office surveys have revealed that where numerous telephone extensions by name, activity or work functions have been listed, callers became confused and this has resulted in misdirected phone calls, interruption of Audit and Collection enforcement operation activity, and fragmentation of the service provided by Taxpayer Service Program personnel. Minimizing the number of telephone extensions we provide and emphasizing Taxpayer Service information phone extensions should relieve this problem.

*Section 3. Requests for IRS Local "Telephone Directories"*

.01 Request for "telephone directories" should be met by first providing a region, district or service center compiled listing of the most frequently called telephone extensions.

.02 Indicated below are suggested guidelines to be followed, principally by district offices, in developing the contents of an abridged "telephone directory". Using the suggested guidelines should result in not only improving service to the users of these telephone directories but should materially assist in eliminating the problem referred to in Section 2 above.

(1) Only the names of the districts' key officials should be shown. Listing of telephone extensions for these key officials is optional.

(2) In the section of the abridged telephone listings for the headquarters office, the Taxpayer Service information telephone extension shall be listed first. If deemed desirable, an alphabetical listing of types of information provided by Taxpayer Service Representatives may be shown. It should be followed by the telephone extension, if this is a separate number, for requesting tax forms, public-use documents, etc.

(3) Where it is deemed necessary, a listing of telephone extensions alphabetically arranged for tax information items related to technical matters outside the scope of the Taxpayer Service Program can be included in the headquarters section of the "telephone directory". However, the telephone extensions listed should be limited to those tax items for which information is most frequently requested.

(4) Subordinate offices below headquarters should usually list only the Taxpayer Service information phone number. For Area offices or large Zone offices, if it is necessary to list the telephone numbers of other divisional components, the listing of extensions for the office should be shown as follows:

Taxpayer Service Information—337-0450

Audit Matters—337-0670

Collection Matters—337-0930

Intelligence Matters—337-0854

(5) For subordinate offices not providing Taxpayer Service on a full-time basis, the hours when service will be available should be shown.

(6) For districts having a Centiphone installation, both the metropolitan telephone number and the Centiphone number should be listed in the headquarters section of the "telephone directory" with a legend explaining the use of each number. Subordinate offices should only list the Centiphone telephone number.

*Section 4. Requests for Complete IRS Local Telephone Directories under "Freedom of Information Act"—5 U.S.C. 552*

.01 An IRS local telephone directory is a non-exempt "identifiable record" within the meaning of subsection (a) (3) of the "Freedom of Information Act." If the requester is not satisfied with the abridged directory, a copy of the entire local telephone directory may be made available for inspection if it contains *only* IRS alphabetical and organizational listings. An available printed copy, or a photocopy thereof, will be provided upon request, subject to payment of the user charges established by Manual Supplement 17G-137, CR: 11G-55, 12G-32, 1 (19)G-34, 21G-60, and 50G-21, dated July 14, 1967.

.02 If a copy of the entire directory is not available at the office where the request is made, or if copy machines and cashier facilities are not available, the requester should be informed where the directory or a copy is available and advised to direct his written request to that office. If the requester prefers he may furnish a written description of the directory, with his name and mailing address, to the person assisting him, who will forward the request to the appropriate office.

*Section 5. Request for Other Telephone Directories*

.01 Requests to inspect or obtain a copy of an entire directory containing listings of other agencies in addition to IRS should be referred to the GSA or other office which compiled the directory.

.02 Notify persons requesting a Treasury telephone directory, which includes IRS offices in Washington, D.C., that it can be obtained on a single copy (\$.40) or subscription (\$1.00 per year, 3 issues) basis from:

Superintendent of Documents  
Government Printing Office  
Washington, D.C.

.03 In these cases you may also want to make available Publication Order Form No. 1939 to facilitate ordering Treasury telephone directories. These forms are available from the Publications Branch, National Office.

.04 Copies of the Treasury telephone directory for use by Services offices will continue to be distributed by the National Office.

*Section 6. Special Requests*

Requests for listings or rosters, by grade, occupation, title or other special arrangements are not affected by this Supplement. Such requests must be referred to the National Office for consideration, as required by Manual Supplement 1 (19)G-32, CR: 11G-51, 12G-30, and 50G-18, dated May 25, 1967.

*Section 7. Solicitation of Employees*

To discourage use of telephone directories, complete or abridged, to contact employees for unofficial purposes, the following statement should be printed on or attached to each copy of directories furnished the public:

"This directory is not to be used for commercial or political solicitation of Government employees by mail or telephone."

*Section 8. Exception*

This procedure does not affect the long-standing practice of furnishing directories on request without cost to Members of Congress, Federal, State and Local Government Agencies, academic and professional organizations, etc., when a Service official authorized in IRM 1244.2 determines that it is in the best interests of the Service to do so.

*Section 9. Effect on Other Documents*

This supersedes MS (19)G-37; CR: 11G-60, 12G-42 and 50G-25, dated May 31, 1968, and Amend. 1 thereto, dated September 4, 1968. It also supplements MS (19)G-32, CR: 11G-51, 12G-30 and 50G-18, dated May 25, 1967, and that "Effect" should be noted by pen and ink on the Supplement, with a reference to this Revision.

LEO C. INGLESBY,  
*Director, Facilities Management Division.*

## MANUAL SUPPLEMENT—U.S. TREASURY DEPARTMENT INTERNAL REVENUE SERVICE

IMPLEMENTATION OF "FREEDOM OF INFORMATION ACT"—PUBLIC LAW 89-487  
(CODIFIED 5 USC 552)*Section 1. Purpose*

This Amendment provides that all IR Manual material and Commissioner's Delegation Orders (other than such material or Orders as are printed in the Internal Revenue Bulletin or Federal Register) shall be available to the public only upon specific request approved by authorized officials. It also provides for the removal of Manual material and Orders presently in the public reading rooms.

*Section 2. Background*

.01 In the initial establishment of the public reading rooms it was determined that nonexempt Manual material (including policy statements) was not required to be placed in the reading rooms because the nonexempt material that constitutes "administrative staff manuals and instructions to staff that affect any member of the public" is published and made available to the public in the Statement of Procedural Rules (26 CFR 601) and in the Internal Revenue Bulletin. The material on Organization and Functions (IRM 1110) and Commissioner's Delegation Orders affecting the public are available to the public by printing in the Federal Register and in the Internal Revenue Bulletin. Nevertheless, it was decided to place such material in the reading rooms to make it more readily available to the public.

.02 On the basis of experience since the establishment of the reading rooms it has been found that there is little use of those issuances by the public. It is believed that the public will be just as well served by making the material available upon specific request in accordance with this Amendment.

*Section 3. Removal of Material from Public Reading Rooms*

Upon receipt of this Amendment all IR Manual material (including basic text, Manual Supplements, policy statements, Handbooks, ADP Handbooks and ADP Handbook Supplements) and all Commissioner's Delegation Orders are to be promptly removed from the public reading rooms and discarded.

*Section 4. Handling Requests for Manual Material and Delegation Orders*

.01 Assistant Commissioners, Regional Commissioners, and District and Service Center Directors are authorized to permit public inspection and to furnish copies of:

(1) Manual material (as defined in Section 3) which is not classified "Official Use Only" and Commissioner's Delegation Orders;

(2) The Personnel portions of the Manual (IRM 1300, 1800, 1900, 1(10)00 and 1(11)00) which are made available to employee organizations and individual employee representatives in accordance with Amendment 1 to the basic Supplement; and

(3) Field office issuances implementing or related to the Personnel portions of the Manual, and field delegation orders.

.02 All requests for Manual material not covered by Section 4.01 will be forwarded to the Disclosure and Liaison Branch, Collection Division, National Office (CP:C:D) in accordance with Section 7 of the basic Supplement. Field offices should furnish reasonable assistance in helping members of the public properly identify the Manual material they wish to request from the National Office.

*Section 5. Effect on Other Documents*

.01 Sections 4, 5 and 6 of Manual Supplement 1(19)G-32, CR 11G-51, 12G-30, and 50G-18, dated May 25, 1967, are amended.

.02 Sections 2 and 3 of Amend. 2 to the basic Supplement, dated August 25, 1967, are amended.

.03 Sections 2.03 and 4.03 of Amend. 3 to the basic Supplement, dated October 25, 1967, are amended.

.04 The "Effect" on material listed in .01 through .03 should be noted by pen and ink on each document cited, with a reference to this Amendment.

RANDOLPH W. THROWER,  
*Commissioner*



# MANUAL SUPPLEMENT—U.S. TREASURY DEPARTMENT INTERNAL REVENUE SERVICE

## FURNISHING ADDRESS INFORMATION

### *Section 1. Purpose*

Revised Policy Statement P-2400-242-1 (same as P-1(19)40-8), approved November 6, 1969, provides general administrative guidelines for implementing Section 6103(f) of the Internal Revenue Code. This Supplement provides more detailed instructions with respect to handling requests for address information from the records of income tax returns filed with the Service.

### *Section 2. Commercial Concerns and Others*

.01 If the requests ask whether a named person filed an income tax return in a designated district for a particular taxable year, the filing information should be given. However, if a "no record" is given, the inquirer should be advised that the taxpayer may have filed a return under another name, address, or in another district.

.02 Except as noted in 2.03, if the request is for address information, the requester should be advised that the request must be denied because, if the Service were to furnish such information it would be regarded as an unwarranted invasion of privacy concerning information furnished to the Service for tax administration purposes. In addition, the requester shall be informed that the processing of such requests would cause a serious disruption to the administration of the tax laws.

.03 In cases where a humane reason is involved, for example, a relative trying to locate another to notify him of an illness or death in the family, the Service will try to help locate missing persons by searching its records of persons who have filed income tax returns. If the Service has an address recorded on the Individual Master file, we will offer to forward a letter to the missing person without disclosing the address to the inquirer. This will ensure that the taxpayer's right to privacy is respected in the event that he does not want his address to become known.

### *Section 3. State and Local Officials*

.01 State tax officials designated by the Governor to receive tax information may be furnished the addresses of persons they are attempting to locate for State or local tax administration purposes. Local tax officials requesting address information should be advised to direct their requests to their State tax officials, who may obtain the information and supply it to local tax officials if the purpose of the request is for tax administration purposes only.

.02 In supplying address information, the State tax officials authorized by the Governor to receive such information should be advised that the information is being furnished for tax administration purposes and should not be used for any other purpose.

.03 Pursuant to Public Law 90-248, effective January 1, 1969, local welfare agencies will be furnished information by the Service regarding the whereabouts of runaway parents as required by Section 410 of the Social Security Act, as amended by this Public Law. This is a National Office project and requests from such officials will be channeled to the Service by the welfare agencies through the Department of Health, Education and Welfare.

.04 Generally, requests by other State and local officials for address information should not be honored. If exceptional circumstances are involved, the request should be referred to the National Office, Attention: CP:C:D, for reply.

### *Section 4. Federal Agencies*

.01 Address information may be furnished to other Federal agencies to assist them in the administration of their responsibilities.

.02 In supplying address information, the requester should be advised that the address is being furnished for official purposes only and should not be used for any other purpose.

### *Section 5. National Defense Student Loan Program*

.01 Since the recovery of Federal loan guarantees is involved, address information may be furnished to educational and lending institutions, if the inquiry

indicates that the information is necessary in locating delinquent borrowers under the program.

.02 In supplying address information, the requester should be advised that the address is being furnished for the purpose of assisting in locating these delinquent borrowers and should not be used for any other purpose.

#### *Section 6. Congressional Inquiries*

Requests from Members of Congress should be handled in a manner consistent with the authority or prohibitions contained herein. Decisions as to whether to offer to forward a letter, furnish the address, or to decline to furnish the information should be made accordingly. For example, we should not ask a Congressman to have the constituent write in if we would make the information available to the constituent; neither should we supply address information if it is obvious from the incoming letter that the constituent who contacted the Congressman has a commercial purpose.

#### *Section 7. Emergency Situations*

Requests in emergency situations must be decided on the basis of best judgment. For example when a member of a family is critically ill and not expected to live but a short time the offer to forward a letter would not be a satisfactory response, under the circumstances. In those cases, District Directors and Assistant District Directors and Service Center Directors and Assistant Service Center Directors are authorized to furnish the address information to a Congressman or a close member of the family. However, in these cases the decision must be made personally by the officials named above.

#### *Section 8. Freedom of Information*

Requests for address information which cite the Freedom of Information Act should be referred to the National Office, Attention: CP:C:D, for reply by the Assistant Commissioner (Compliance) as required by Section 601.702(c) (6) (ii) of the Statement of Procedural Rules and MS 1(19)G-32, CR: 11G-51, 12G-30, 50G-18.

#### *Section 9. Subpoenas or Court Orders for Address Information*

.01 Upon receipt of a subpoena or other order of a Court requiring disclosure of the address of a taxpayer, the matter should promptly be referred to the National Office, Attention: CP:C:D. In this connection see 26 CFR 301.9000-1 and IRM 247-20 for additional instructions.

.02 In cases where the information has previously been denied and the taxpayer seeks an injunction against the Service for withholding the information the provisions of MS 1(19)G-33, CR: 11G-54, 12G-31, 24G-188, and IRM 5832.4 should be followed.

#### *Section 10. Effect on Other Documents*

This supersedes Manual Supplement 24G-203, CR: 11G-62, 12G-46, 1(19)G-40, 50G-26, and 58G-18, dated February 24, 1969, and Amend. 1 thereto, dated August 26, 1969. It also supersedes IRM 247-19.02. It supplements Manual Supplements: 1(19)G-32, CR: 11G-51, 12G-30, 50G-18; and 1(19)G-33, CR: 11G-54, 12G-31, 24G-188; and IRM 5832.4.

RANDOLPH W. THROWER,  
Commissioner

### U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

#### Manual Supplement—October 25, 1967

#### IMPLEMENTATION OF "FREEDOM OF INFORMATION ACT," PUBLIC LAW 89-487

#### (CODIFIED 5 U.S.C. 552)

#### *Section 1. Purpose*

This Amendment to the basic Supplement establishes procedures for preparation of indexes required by Public Law 89-487, "Freedom of Information Act," (now codified as 5 U.S.C. 552); provides procedures for transmitting to reading rooms indexes and material required to maintain reading rooms in a current status; and establishes responsibilities and procedures for control of materials in reading rooms.

## *Section 2. Background*

.01 The Internal Revenue Service is required by 5 U.S.C. 552(a) (2) to maintain and make available for copying current indexes identifying any matter described in subdivisions (i) through (iii), 601.702(b) (1) of the Regulations, and also described in Section 3 of the basic Supplement, which is issued, adopted, or promulgated after July 4, 1967. This applies only to matters which affect any member of the public and have precedential significance and does not apply, for example, to:

(1) administrative manuals on property or fiscal accounting, vehicle maintenance, personnel administration, and similar proprietary functions of the Service;

(2) any ruling or advisory interpretation which is issued to a taxpayer on a particular transaction or set of facts and applied only to that transaction or set of facts; or

(3) matters which have been made available by publication or reference in the Federal Register as provided in 601.702(a) of the Regulations.

.02 The Service has been asked to furnish to the Main Treasury Library indexes prepared for public reading rooms.

.03 Section 5 of the basic Supplement assigns responsibility to:

(1) Originating offices for furnishing the Public Information Division eight copies of nonexempt internal management documents, together with a transmittal memorandum of filing instructions;

(2) The Public Information Division for reviewing the accuracy of the filing instructions and then furnishing a copy of the material to each reading room; and

(3) Assistant Commissioners, the Director, Foreign Tax Assistance Staff, and the Chief Counsel for furnishing or arranging for automatic distribution of eight copies of all other materials to be placed in reading rooms (see, for example, section 4.03 of the basic Supplement) to the Public Information Division.

.04 In memorandum of May 23, 1967 from the Assistant Commissioner (Administration) to Assistant Commissioners, Director, Foreign Tax Assistance Staff, and Chief Counsel, Subject: Preparation of Material for Public Reading Rooms, each Division was asked to maintain a copy of the set of materials sent to public reading rooms, for use in preparing future transmittals of reading room material.

## *Section 3. Indexing Responsibilities and Procedures*

.01 Each official assigned responsibility under Section 5 of the basic Supplement for furnishing material for reading rooms is also responsible for:

(1) Determining whether this material is subject to the indexing requirement of 5 U.S.C. 552(a) (2);

(2) Obtaining the concurrence, concerning the indexing requirement, from other offices involved in the issuance of the materials; and

(3) Providing any indexes required by 5 U.S.C. 552(a) (2).

.02 Indexes will consist of typed 3" x 5" cards filed alphabetically by topic. Each card will show in the upper left corner the topic word or phrase, in the upper right corner the appropriate citation, and in the center the title of the document.

.03 Ten sets of index cards will be prepared, one for each reading room, the Main Treasury Library, and the office maintaining controls in accordance with Section 5 of this Amendment.

## *Section 4. Procedures for Transmittal of Materials Required to Maintain Reading Rooms in a Current Status*

.01 Officials responsible for furnishing reading room materials will use Form 4343, Public Reading Room Transmittal (see attached), for sending to the reading rooms material described in Sections 4.032, 4.036, and 4.037 of the basic Supplement. Eight separately assembled sets of the Transmittal, the material being distributed, and any required index cards will be sent to the Public Information Division. An extra set of index cards (making nine sets in all) should be included for the Main Treasury Library.

.02 The Public Reading Room Transmittal will be signed by the official furnishing the material and will show:

(1) Date of transmittal;

(2) Title or description of material and numerical designation, if any;

(3) Filing instructions, covering removal and insertion of material;

(4) Whether or not the material is required to be indexed; and

(5) If appropriate, other information useful to visitors and employees who maintain the reading rooms.

.03 More than one item in the same identification class (i.e., Manual Transmittals or Manual Supplements) may be transmitted under one Public Reading Room Transmittal. However, each item should be identified in the "title" section in a manner that will allow clear and easy association of the item with its filing instructions.

.04 In addition to furnishing material, Public Reading Room Transmittals should be used to transmit other instructions concerning reading room material, such as removal of material not being replaced, and pen-and-ink changes.

.05 Public Reading Room Transmittals will be reviewed for accuracy of filing instructions, numbered, and forwarded to reading rooms by the Public Information Division.

.06 A loose-leaf binder containing the Public Reading Room Transmittals in numerical sequence will be maintained in each public reading room.

.07 The Facilities Management Division will distribute automatically to reading rooms that material described in Sections 4.031, 4.033, 4.034, and 4.035 of the basic supplement.

#### *Section 5. Control Responsibilities and Procedures*

.01 Each official assigned responsibility under Section 5 of the basic Supplement for furnishing material for reading rooms is also responsible for maintaining controls over materials covered in section 4.01 of this Amendment so that, if needed, it may be readily ascertained when specified material (e.g., a policy statement, Manual Supplement or segment of basic text) was sent to the Public Information Division for placement in the reading rooms and when an instruction for removal of material or pen-and-ink change was sent.

.02 Control records should include for each Division or other component a set (or a listing) of all materials sent to the reading rooms; a set of index cards prepared in accordance with Section 3 of this Amendment; and copies of Public Reading Room Transmittals.

#### *Section 6. Distribution*

An automatic distribution will be made of the Public Reading Room Transmittal, Form 4343, without requisition.

#### *Section 7. Effect on Other Documents*

This Amendment supplements Manual Supplement 1(19) G-32, CR: 11G-51, 12G-30, 50G-18, dated May 25, 1967.

EDWARD F. PRESTON,  
*Assistant Commissioner (Administration).*

### U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

#### *Manual Supplement—August 25, 1967*

#### IMPLEMENTATION OF "FREEDOM OF INFORMATION ACT" PUBLIC LAW 89-487 (CODIFIED 5 USC 552)

#### *Section 1. Purpose*

This Amendment revises the procedures for making Service policy statements available to the public.

#### *Section 2. Background*

Section 2.023 of the basic Supplement provides that "The Assistant Commissioner (Planning and Research) will be responsible for publication in the Federal Register of those Service policy statements which the functional offices involved have agreed are required to be published." However, on the basis of a discussion with the Director, Office of the Federal Register, it has been concluded that the majority of the non-exempt policy statements do not require publication in the Register, but that all non-exempt policies should be made available to the public in the reading rooms. The publication of any policy items which require printing in the Register will be accomplished by amendments to the Regulations, Part 301, 601, etc.

### *Section 3. Responsibilities for Publication of Service Policy Statements*

.01 Section 2.023 of the basic Supplement is amended to provide that each Assistant Commissioner, the Director, Foreign Tax Assistance Staff, and the Chief Counsel is responsible for determining whether the requirements of Section 3(a) (D) of the Act (codified 5 USC 552(a) (1) (D)) for publication of "substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency" have been met and for initiating action to comply.

.02 The Assistant Commissioner (Planning and Research) will furnish each public reading room a copy of those Service policy statements which the functional offices involved have agreed are required to be made public. Subsequently, as new or revised policy statements are issued, the Assistant Commissioner (Planning and Research) will, after obtaining agreement from the functional offices concerned, furnish copies of non-exempt policy statements to the reading rooms.

.03 Existing and newly-approved statements of Service policy should be reviewed to determine whether any statements concerning the rights and duties of taxpayers, or containing material which should be made known to the public in order that such persons not be adversely affected by lack of knowledge of the material, have not been previously published in the Register. If any such statements are found, the appropriate Assistant Commissioner, the Director, Foreign Tax Assistants Staff, or the Chief Counsel, will initiate action to have any necessary issuances prepared as appropriate amendments to the Regulations, for publication in the Register.

### *Section 4. Effect on Other Documents*

This amends Section 2.023 and 4.032 of Manual Supplement 1(19)G-32, CR: 11G-51, 12G-30 and 50G-18, dated May 25, 1967.

SHELDEN S. COHEN,  
*Commissioner*

## U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

### *Manual Supplement—July 14, 1967*

#### ESTABLISHMENT OF USER CHARGE UNDER "FREEDOM OF INFORMATION ACT"

### *Section 1. Purpose*

This Supplement establishes a user charge to be asserted for benefits provided the public upon request under Freedom of Information Act (P.L. 89-487), codified as 5USC 552 by P.L. 90-23. It also establishes responsibility for collection, accounting and reporting receipts from this charge.

### *Section 2. Background*

.01 Pertinent background on the Act and implementation procedures are set forth in Manual Supplement 1(19)G-32, C.R. 11G-51, 12G-30 and 50G-18, dated May 25, 1967.

.02 The Act becomes effective July 4, 1967. Reading Rooms will be established and administered by Public Information personnel in National Office and in each region.

.03 Bureau of Budget Circular A-25, dated September 23, 1959, provides that a user charge shall be established to provide full cost recovery for all Federal activities which convey special benefits to recipients above and beyond those accruing to the public at large. In accordance with this Circular, the subject user charge will cover search costs for locating records not available in the reading rooms, and costs of all photocopies and unpriced internal publications furnished the public in accordance with 5USC 552, (not applicable to taxpayer assistance materials and forms which are currently distributed free of charge).

.04 Treasury Department Administrative Circular No. 159, dated June 1, 1967, on "Freedom of Information Act" requires that a user charge be established to recover direct, actual costs of duplicating, reproducing, certifying or authenticating copies of records made available under this Act for public inspection and copying. Also, a charge should be made to recover the full cost to the bureau of searching for identifiable records, as well as other indirect costs.

### *Distribution*

IRM:

1717; 1100; 1200; 1(19)00; 211; 5000

.05 Procedures prescribed herein relative to this Act are intended to make maximum use of existing collection and accounting facilities and procedures. The procedures will be reviewed after we get some experience data on volume of requests and collections for this user charge.

### *Section 3. Applicability of this User Charge*

.01 This user charge applies only to requests for records and documents under 5 USC 552. It does not apply to requests for special statistical studies, compilations of selected statistics and other related services, which should be forwarded to National Office, Assistant Commissioner (Planning and Research), for evaluation and follow-up in accordance with Manual Supplement 1(13)RDD-3, C.R. 15RDD-4, dated February 9, 1965, on "Requests for Special Statistical Studies, Compilations, and Other Services."

.02 This user charge does not apply to requests for photocopies of tax returns. Such requests should be processed in accordance with IRM 241.

.03 Also, this charge does not apply to requests for training materials by State and Local Governments. These requests should be forwarded to Director, Training Division, National Office. These requests will be processed in accordance with Manual Supplement 1(12)G-61, dated May 28, 1965, on "Training Assistance to State and Local Governments."

### *Section 4. Asserting the User Charge*

.01 The Attachment to this Supplement constitutes the schedule of fees for this user charge. The Attachment is also available as Document Number 5951, "IRS Schedule of Fees, Freedom of Information Act, 5 USC 552," which should be made available to the public as appropriate.

.02 A charge shall be asserted only for benefits covered in the Attachment. When a charge is applicable, the minimum fee of \$1.00 shall be asserted. For example, the appropriate fee for three photocopies (3 pages) is \$1.00 and \$1.25 for five.

.03 A charge for records search will be made only for the actual time spent in searching for the requested record. There will be no charge for time spent in restoring the record to its original location nor for records search when it is determined that the request must be denied.

.04 No charge will be made for the following:

- 1 Requests from other Federal agencies
- 2 Locating materials in reading room files
- 3 Allowing requester to read or transcribe reading room materials
- 4 Resources required to determine whether requested records are exempt or non-exempt under the Act

.05 Prepayment of fees over \$5.00 is required in filling requests. The amount to be charged should be determined based on availability and disclosure status of records requested, number of pages, and an estimate of search time involved in locating requested records. This information and a copy of Document No. 5951 should then be communicated to requester in accordance with Section 7.04, Manual Supplement 1(19)G-32, C.R. 11G-51, 12G-30, and 50G-18. The reply should instruct the requester as to where and when to make payment. Copy of initial request and the reply should be forwarded to or retained by that reading room, as the case may be, pending follow-up by requester.

.06 Prepayment is not required in filling requests by mail where the fee is \$5.00 or less. Form 4313, Special Information Services Invoice, has been designed for use as a billing document in these cases and is to be prepared in quadruplicate with the original and one copy forwarded to the requester along with requested material. The office and location to be shown on the upper portion of the Form 4313 will be the Regional Fiscal Management Branch or National Office Fiscal Section, as appropriate, where the requester will be directed to mail payment. One copy of the Form 4313 will be forwarded to Fiscal Management as advance notice that payment should be forthcoming and one copy retained in the Reading Room file. In the event that requesters fail to submit payment, Fiscal Management offices will follow collection procedures set forth in IRM 1717, Subsection 46(11).4.

.07 In small offices having no district cashier, the requester should be encouraged to bring a check or money order payable to the Internal Revenue Service when he comes for the requested material. These payments will be mailed to the appropriate Fiscal Management office for deposit.

#### *Section 5. Collection, Deposit and Accounting for Receipts*

.01 Receipts from this user charge shall be accounted for by Fiscal Management in each Region and the National Office. Receipts shall be credited to General Fund Receipts, Account 20-2419.

.02 Collections for this user charge in district offices will be deposited by district cashier as courtesy deposits for Regional Fiscal Management Branch. Collections in regional offices for this user charge will be deposited by Fiscal Section, Fiscal Management Branch, National Office collections will be deposited by Fiscal Section, Fiscal Management Division.

.03 A serially numbered, three-part receipt book will be used in accounting for collections received in reading rooms. The original receipt will be given the payer (requester), one copy will accompany the collection to the district cashier or Fiscal Management, as the case may be, and one copy retained in the book as the reading room's record. An initial supply of those receipt books will be furnished each reading room without requisition.

.04 Appropriate steps will be taken to safeguard moneys received and deposits will be made regularly.

#### *Section 6. Reporting*

.01 Bureau of Budget Circular A-25 requires a report, due August 31 each year, showing volume, cost and collections for all user charges. This report is prepared by Fiscal Management Division.

.02 For reporting purposes this user charge is designated "IRS-17: Freedom of Information."

.03 Fiscal Management Division will account for collections and in cooperation with Public Information Division determine the annual cost of providing benefits under this user charge.

.04 Public Information will account for volume (number of requests for which a charge was made). In this regard, each reading room should maintain a memorandum record of requests filled for which a charge was made.

.05 Public Information Officers and Director of Public Information Division will report annual volume of requests for which a charge was made to Fiscal Management Officer, National Office, by July 10, each year. This will be a memorandum report, Report Symbol NO-A:F-80.

#### *Section 7. Distribution of Document No. 5951 and Form 4313*

Automatic distribution of Document No. 5951 and Form 4313 will be made to regions as soon as they are available.

#### *Section 8. Effect on other Documents*

This supplements Sections 4.01, 6.01, and 7.04 of Manual Supplement 1(19)G-32, C.R. 11G-51, 12G-30, and 50G-18, IRM 1717, Administrative Accounting Handbook, and IRM 211, Receipt and Deposit Operations, are also supplemented.

GRAY W. HUME,

*Fiscal Management Officer.*

### IRS SCHEDULE OF FEES—FREEDOM OF INFORMATION ACT 5 USC 552\*

Minimum charge applicable when one or more of following charges is as-	
serted -----	\$1. 00
Photocopies, each page-----	. 25
Certification of photocopies by appropriate official, each certification--	1. 00
Sale of unpriced printed material (not applicable to taxpayer assistance materials and forms which are currently distributed free),	
each 25 pages or fraction thereof-----	. 25
Records search (applies to search for records not on file in reading room), each hour or fraction thereof-----	3. 50

\*Also available as Document No. 5951.

Requests by mail may be made to any of following IRS Reading Rooms:

*National Office*

Mail Address:

Director, Public Information Div.  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Location:

Same as mail address

*North-Atlantic Region*

Mail Address:

Regional Public Information Officer  
Room 1102  
90 Church Street  
New York, New York 10007

Location:

Same as mail address

*Mid-Atlantic Region*

Mail Address:

Regional Public Information Officer  
P.O. Box 12805  
Philadelphia, Pennsylvania 19108

Location:

401 N. Broad Street

*Central Region*

Mail Address:

Regional Public Information Officer  
Room 7106  
Federal Office Bldg.  
550 Main Street  
Cincinnati, Ohio 45202

Location:

Same as mail address

*Southwest Region*

Mail Address:

Regional Public Information Officer  
1114 Commerce Street  
Dallas, Texas 75202

Location:

Same as mail address

*Western Region*

Mail Address:

Regional Public Information Officer  
Flood Building  
870 Market Street  
San Francisco, Calif. 94102

Location:

Same as mail address

*Southeast Region*

Mail Address:

Regional Public Information Officer  
P.O. Box 926  
Atlanta, Georgia 30301

Location:

Federal Office Building  
275 Peachtree Street

*Midwest Region*

Mail Address:

Regional Public Information Officer  
17 N. Dearborn Street  
Chicago, Illinois 60602

Location:

Same as mail address



## U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

*Manual Supplement—June 28, 1967*

INJUNCTION SUITS UNDER FREEDOM OF INFORMATION ACT, 5 U.S.C. 552

*Section 1. Purpose*

This Supplement establishes procedures for furnishing information to the Office of Chief Counsel, National Office, concerning injunction proceedings in United States district courts under subsection (a)(3) of the Act (which is effective July 4, 1967) for the production of Internal Revenue Service records. The 5 U.S.C. 552 reference is to the codification in June 1967. (Attachment)

*Section 2. Background*

Manual Supplement 1(19)G-32, CR: 11G-51, 12G-30, 50G-18, establishes responsibilities and procedures for implementing the Act and in Section 7 provides for processing of requests for records under subsection (a)(3) of the Act. Subsection (a)(3) provides in part: "On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of the uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way."

*Section 3. Responsibility of Collection Litigation Division, Chief Counsel*

The Collection Litigation Division in the National Office of the Chief Counsel has the responsibility within the Internal Revenue Service for the handling of legal problems arising under the Act and will handle all matters in litigation under subsection (a)(3) with the Department of Justice. The Collection Litigation Division will coordinate with the interested National Office or field components of the Service.

*Section 4. Expeditious Handling*

.01 As the Act calls for expeditious handling by Federal district courts of injunction actions under subsection (a)(3), it is important that the Collection Litigation Division be informed immediately of any such action, accompanied by appropriate factual material, or if such material is not then available, at the earliest possible date. Since the action will involve an injunction proceeding, it is possible that the Government may be held to a short period for filing an answer with the court.

*Distribution:*

IRM 1100, 1200, 1(19)00, 247 and 5000

.02 Regional and district offices or National Office components receiving summonses, complaints, pleadings, or any other information regardless of source, which indicate that a suit has been filed under the Act should forward the same promptly, without awaiting a request, with a covering memorandum to the Chief Counsel, National Office, Attention: Collection Litigation Division, CC:CL.

.03 When time is of the essence, Regional Commissioners, Regional Counsel, Regional Inspectors, District Directors, and Service Center Directors may authorize direct referrals by employees to be followed up by the more formal procedures set forth herein.

.04 In the event of any urgency, or if there is an indication that less than two weeks remain in which to file an answer to any pleading, a teletype should be sent or a telephone call made from the office receiving the pleading to the Collection Litigation Division.

### *Section 5. Information Required*

.01 Information furnished to the Collection Litigation Division in the covering memorandum, or as soon as possible after forwarding the summons or pleading, should include the following:

- (1) The title of the case and the docket number.
- (2) Date and time of service of the summons and complaint or other pleading and upon whom served.
- (3) Location of the Federal district court.
- (4) Date answer is to be filed in the court.
- (5) Details of any request made by the plaintiff for the records requested, how handled, including date sent to the Disclosure and Liaison Branch, Collection Division, National Office, under the provisions of Section 7.02 of Manual Supplement 1(19)G-32.
- (6) A copy of the record demanded by the pleading or a description if the record is too voluminous for copying.
- (7) Whether there are any open or pending civil or criminal aspects of cases relating to the taxpayer's request.
- (8) Whether the record sought would identify informants; whether it was obtained in confidence; or whether for other reasons it should not be made public.
- (9) Names of Service personnel familiar with the demand and any preceding request.
- (10) Name and telephone number of the person from whom additional information can be requested.

### *Section 6. Limitations*

Nothing in this Supplement is intended to change or modify instructions as to the authority of the Commissioner to make the final Service decision as to disclosure of information or furnishing of testimony in response to a subpoena or other court order.

### *Section 7. Effect on Other Documents*

This supplements Manual Supplement 1(19)G-32, CR: 11G-51, 12G-30, and 50G-18, dated May 25, 1967, and amends Section 7 of that Supplement. It also supplements IRM 247.

SHELDON S. COHEN,  
*Commissioner.*

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PUBLIC LAW 90-23, 90TH CONGRESS, H.R. 5357, JUNE 5, 1967

An Act To amend section 552 of title 5, United States Code, to codify the provisions of Public Law 89-487

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 552 of title 5, United States Code, is amended to read:

"§ 552. Public information; agency rules, opinions, orders, records, and proceedings

"(a) Each agency shall make available to the public information as follows:

"(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

"(A) descriptions of its central and field organization and the established places at which the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

"(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

"(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

"(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

"(E) Each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

"(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

"(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

"(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

"(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

"(i) it has been indexed and either made available or published as provided by this paragraph; or

"(ii) the party has actual and timely notice of the terms thereof.

"(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complaint resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complaint. In such a case the court shall determine the matter *de novo* and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

"(4) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

"(b) This section does not apply to matters that are—

"(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

"(2) related solely to the internal personnel rules and practices of an agency;

"(3) specifically exempted from disclosure by statute;

"(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

"(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

"(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

"(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

"(9) geological and geophysical information and data, including maps, concerning wells.

"(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress."

SEC. 2. The analysis of chapter 5 of title 5, United States Code, is amended by striking out:

"552. Publication of information, rules, opinions, orders, and public records." and inserting in place thereof:

"52. Public information; agency rules, opinions, orders, records, and proceedings."

SEC. 3. The Act of July 4, 1966 (Public Law 89-487, 80 Stat. 250), is repealed.

SEC. 4. This Act shall be effective July 4, 1967, or on the date of enactment, whichever is later.

Approved June 5, 1967.

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U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

*Manual Supplement—June 27, 1967*

IMPLEMENTATION OF "FREEDOM OF INFORMATION ACT", PUBLIC LAW 89-487

*Section 1. Purpose*

This Amendment clarifies the effect of Section 6.02 of the basic Supplement in connection with furnishing IR-Manual material to employee organizations and employee representatives.

*Section 2. Background*

It has been the general practice for Service officials to make available to employee organizations and individual employee representatives, Personnel portions of the IR-Manual (IRM 1300, 1800, 1900, 1(10)00 and 1(11)00) in connection with disciplinary actions, grievance appeals, etc. This practice is based on general guidelines in the Federal Personnel Manual covering relationships with employees, employee organizations, and employee representatives.

*Section 3. Application*

Nothing in Section 6.02 of the basic Supplement is intended to modify or restrict the present practice for making Personnel portions of the IR-Manual available to employee organizations and individual employee representatives.

*Section 4. Effect on Other Documents*

Section 6.02 of Manual Supplement 1(19)G-32, CR: 11G-51, 12G-30, 50G-18, dated May 25, 1967, is supplemented.

SHELDON S. COHEN,  
*Commissioner.*

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U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

*Manual Supplement—May 25, 1967*

IMPLEMENTATION OF "FREEDOM OF INFORMATION ACT", PUBLIC LAW 89-487

*Section 1. Purpose*

This Supplement establishes the responsibilities and procedures for implementing Public Law 89-487, Freedom of Information Act, the provisions of which will become effective on July 4, 1967, amending Section 3 of the Administrative Procedure Act, 5 USC 1002. (See Attachment.)

*Section 2. Responsibilities for Publication of Certain Material*

.01 The Assistant Commissioner (Planning and Research) is responsible for meeting the requirements of Section 3(a)(A) of the Act for publication in the

Federal Register of "descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions."

.02 Each Assistant Commissioner, the Director, Foreign Tax Assistance Staff, and the Chief Counsel is responsible for determining for his functional area:

(1) Whether the requirements of Section 3(a)(B) of the Act for publication of "statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available" have been met, and for initiating action to comply.

(2) Whether the requirements of Section 3(a)(C) of the Act for publication of "rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations" have been met, and for initiating action to comply.

(3) Whether the requirements of Section 3(a)(D) of the Act for publication of "substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency" have been met, and for initiating action to comply. The Assistant Commissioner (Planning and Research) will be responsible for publication in the Federal Register of those Service policy statements which the functional offices involved have agreed are required to be published.

.03 Each Assistant Commissioner, the Director, Foreign Tax Assistance Staff, and the Chief Counsel is responsible for initiating action to publish every amendment, revision, or repeal of the foregoing material, in accordance with the assignment of responsibilities set forth in this Section, as required by Section 3(a)(E) of the Act.

#### *Section 3. Responsibilities for Making Certain Materials Available for Public Inspection and Copying*

.01 Each Assistant Commissioner, the Director, Foreign Tax Assistance Staff, and the Chief Counsel is responsible, in accordance with the procedures prescribed in Section 4 of this Supplement, for making available for public inspection and copying:

(1) Material of the type described in Section 3(b)(A) of the Act, "all final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases." This provision applies to Alcohol and Tobacco Tax Division opinions and orders in administrative procedures on applications for, and to suspend, revoke, or annul, permits under the alcohol, alcoholic beverages, and tobacco permit systems, and the firearms control system.

(2) Material of the type described in Section 3(b)(B) of the Act, "statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register."

(3) Material of the type described in Section 3(b)(C) of the Act, "administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and copies offered for sale." District and regional issuances will be the subject of separate instructions to be issued at a later date. Until such instructions are issued, requests for regional and district issuances will be handled in accordance with the procedure set forth in Section 7.02.

#### *Section 4. Establishment of Public Reading Rooms*

.01 Public reading rooms will be established in the National Office and in each regional office (the regional office may utilize district office space if preferable), staffed by Public Information personnel. Personnel assigned these duties will be available to assist the public in locating material as well as providing copies of the material upon payment of user charges for this service. These charges are to be established by the Assistant Commissioner (Administration).

.02 Initially, each Assistant Commissioner, the Director, Foreign Tax Assistance Staff, and the Chief Counsel will arrange for providing each reading room with a copy of all material within their functional area required by Sections

3(a) and 3(b) of the Act to be published or made available for public inspection and copying.

.03 The materials in the reading rooms will include :

(1) A complete set of Federal Tax Regulations; this will be the official Loose-leaf Regulations System.

(2) Other Federal Regulations or materials promulgated by the Service and published in the Federal Register or incorporated by reference therein. This will include delegation orders, Statement on Organization and Functions, and those official policies of the Internal Revenue Service which are considered to be under the purview of Sections 3(a) and 3(b) of the Act.

(3) A set of Cumulative Bulletins, and Internal Revenue Bulletins which have not yet been cumulated in C.B.'s, which is as complete as is reasonably possible, recognizing that some early C.B. volumes are now rare.

(4) All other IRS publications (except tax forms) which are intended for public sale or use, such as "Your Federal Income Tax," "Farmer's Tax Guide," etc.

(5) A description of forms available; it is contemplated that Document No. 5259, List of Major Tax Returns and Related Forms, will be revised and made available for this purpose.

(6) Those Internal Revenue Manual materials, and IRS training texts and materials, which are furnished to the reading rooms by the National Office as being open for public inspection and copying.

(7) Final opinions and orders as described in Section 3.011 of this Supplement.

(8) Such indexes as may now exist covering Sections 4.031, 4.032, and 4.033, and such other indexes as may be provided by the National Office covering reading room materials.

.04 Material described in Sections 4.031, 4.033, 4.034, and 4.035 of this Supplement will be obtained locally by the Regional Public Information Officer, to the extent possible. All other material described in Section 4.03 will be furnished by the National Office.

#### *Section 5. Maintenance of Reading Room Material in Current Status*

.01 After the initial assembly of reading room material, the Planning and Analysis Division, upon receipt of National Office originated internal management documents after printing, will forward two copies to the originating office with a pre-printed notice that the issuance is to be considered for inclusion in each reading room. The originating office will be responsible for obtaining the concurrence of other offices involved in the issuance and, if determined to be nonexempt, for furnishing the Public Information Division, National Office, eight copies of the issuance (edited to the extent necessary to exclude exempt material), together with a transmittal memorandum of filing instructions. The Public Information Division will review the accuracy of the filing instructions and furnish a copy of the material to each reading room.

.02 Each Assistant Commissioner, the Director, Foreign Tax Assistance Staff, and the Chief Counsel is responsible for furnishing, or arranging for the automatic distribution of, eight copies of all other materials for reading rooms (see Section 4.02) to the Public Information Division for redistribution to the reading rooms, including amendments, revisions, and repeals of such materials.

#### *Section 6. Requests for Access to Reading Room Materials Received in Offices Not Having a Reading Room*

.01 Requests for inspection or copying of reading room material of the type described in Sections 4.031, 4.032, 4.033, 4.034, and 4.035 of this Supplement should be honored by any office of the Service to the extent that such materials are readily available in that office. Upon payment of established copy charges, copies of such material may be furnished the requester by offices having copy machines and cashier facilities available. In other offices, requests for copies should be handled in accordance with Sections 6.02 and 6.03 of this Supplement. If such materials are not available where the request is made, the requester should be advised that such material is available in the reading rooms which have been established in the National Office and in each regional headquarters city. If the requester wishes to obtain copies of such material by mail, he should be advised to direct his written request to a Public Information Officer at one of the reading room locations.

.02 If the request is for material described in Sections 4.036, 4.037, or 4.038 of this Supplement, the requester should be advised by the person assisting him that material of this type may, or may not, be available for public inspection and that he should direct his written request to a Public Information Officer at one of the reading room locations.

.03 In either of the circumstances described in Sections 6.01 or 6.02 of this Supplement, if the requester prefers, he may furnish a written description of the material desired, with his name and mailing address, to the person assisting him, who will forward the request to the appropriate Public Information Officer.

#### *Section 7. Other Records Available for Inspection and Copying*

.01 Section 3(c) of the Act states, "Except with respect to the records made available pursuant to subsections (a) and (b), every agency shall, upon request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute and procedure to be followed, make such records promptly available to any person." Certain exemptions, applicable to all matters covered by Section 3 of the Act, are set forth in Section 3(e) of the Act.

.02 Regional and district offices or National Office components receiving requests for records or material for which disclosure instructions have not been previously issued (e.g., IRM 247), and which have not been made available in the reading rooms, should promptly acknowledge receipt of the request and notify the requester that his request has been forwarded for the attention of the Disclosure and Liaison Branch, Collection Division, National Office, (CP:C:D), for consideration, and that he will receive written notice of the decision reached.

.03 Field offices are to immediately forward such requests, including a copy of the record, if available, or a description if the record is too voluminous for copying. The district office should transmit a copy of the request and related file to the Regional Commissioner for information.

.04 The Disclosure and Liaison Branch, after obtaining the concurrence of the Division Directors involved, will promptly prepare a reply for the signature of the Assistant Commissioner (Compliance) advising the requester whether or not disclosure is authorized (with proper notice of his appeal rights, if denied), with a copy being sent to the Regional Commissioner and District Director involved. Replies will advise the requester of the rate of charge for searching and reproduction costs for the record requested (when the request is being granted) and will be routed through the National Office components involved in the request, for review and concurrence.

.05 Any appeal by the taxpayer from the decision of the Assistant Commissioner (Compliance) will be promptly considered, and granted or denied, by the Commissioner, or referred to the Secretary.

#### *Section 8. Effect on Other Documents*

This amends and supplements IRM 1120, 1230, 1240 and 1(19)40. in

SHIELDON S. COHEN,  
*Commissioner.*

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PUBLIC LAW 89-487

89TH CONGRESS, S. 1160

JULY 4, 1966

An Act To amend section 3 of the Administrative Procedure Act, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 3, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), is amended to read as follows:

"SEC. 3. Every agency shall make available to the public the following information:

"(a) PUBLICATION IN THE FEDERAL REGISTER.—Every agency shall separately state and currently publish in the Federal Register for the guidance of the

public (A) descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (C) rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) every amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required to be published in the Federal Register and not so published. For purposes of this subsection, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

"(b) AGENCY OPINIONS AND ORDERS.—Every agency shall, in accordance with published rules, make available for public inspection and copying (A) all final opinions (including concurring and dissenting opinions) and all orders made in the adjudications of cases, (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register, and (C) administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and copies offered for sale. To the extent required to present a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction; *Provided*, That in every case the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after the effective date of this Act and which is required by this subsection to be made available or published. No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public may be relied upon, used or cited as precedent by an agency against any private party unless it has been indexed and either made available or published as provided by this subsection or unless that private party shall have actual and timely notice of the terms thereof.

"(c) AGENCY RECORDS.—Except with respect to the records made available pursuant to subsections (a) and (b), every agency shall, upon request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute and procedure to be followed, make such records promptly available to any person. Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated shall have jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

"(d) AGENCY PROCEEDINGS.—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and such record shall be available for public inspection.

"(e) EXEMPTIONS.—The provisions of this section shall not be applicable to matters that are (1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy; (2) related solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from any person and privileged or confidential; (5) inter-agency



or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency; (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party; (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and (9) geological and geophysical information and data (including maps) concerning wells.

“(f) LIMITATION OF EXEMPTIONS.—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.

“(g) PRIVATE PARTY.—As used in this section, ‘private party’ means any party other than an agency.

“(h) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act.”

Approved July 4, 1966.

## APPENDIX II

## Internal Revenue Service Instructions and Guidelines Relating to FOI Reading Room

## FOI READING ROOM OPERATIONAL INSTRUCTION NO. 1

Memorandum for file.

Subject: Organization of FOI Reading Room.

*I. Stack locations*

The available 14 stacks will be utilized as follows:

*Stack 1.*—Regulations; Federal-State Agreements; Cumulative Bulletins.

*Stack 2.*—Reserve for future expansion.

*Stack 3.*—Reserve for future expansion.

*Stack 4.*—Congressional Records—Federal Registers.

*Stack 5.*—Miscellaneous records.

*Stack 6.*—Reserve for future expansion.

*Stack 7.*—IRS documents. (Note: Quarterly statistical reports have document numbers.)

*Stack 8.*—Reserve for future expansion.

*Stack 9.*—IRS publications. (Note: S.O.I. reports and commissioner's annual reports have publication numbers.)

*Stack 10.*—Reserve for future expansion.

*Stack 11.*—IRS training texts.

*Stack 12.*—Reserve for future expansion.

*Stack 13.*—IR manual.

*Stack 14.*—Reserve for future expansion.

*II. Shelf arrangement*

1. Cumulative Bulletins will be arranged by year and volume number. Late issues of IR Bulletins will be maintained until a Cumulative Bulletin including them is received, at which time the pamphlet copies will be discarded.

3. Documents, Publications, and Training Texts will be arranged in numerical order.

*III. Use of filing cabinets*

Some materials deposited in the Reading Room will not be appropriate for storage on shelves due to their small size, odd shape or other physical characteristics, such as consisting of only one or a few pages. These materials should be placed in envelopes—wallet type folders with elastic tape.

As many materials as can be conveniently stored will be placed in each folder. The materials need not be related to each other, but should be placed in the folder as received.

Each folder should be numbered consecutively as it is established and placed in numerical order in the filing cabinets.

*IV. Use of FOI reading room file card*

*Freedom of Information Reading Room File Card*

Publication -----

Cross References-----

Made Public----- Field Advised-----

Shelf Location-----

Other -----

1. At least one (and probably several) cards should be prepared for each record or class of records contained in the reading room. However, multiple cards need not be produced for various issues of the same document, or for sub-parts of a larger document. For instance, we have many volumes of Cumulative Bulletins and Commissioner's Annual Reports, for which a single card should suffice. The volumes contained in the collection should be listed on the reverse of the file card as follows:

A. If we have a complete run : 1923 thru 1971.

B. If we have a broken run :

1923.

1928-31.

1939-47.

1949-71.

C. If a new issue is added :

1923.

1928-31.

1939-47.

1949-71.

1972.

1973.

No card need be produced for IR Bulletins in pamphlet form since these will be discarded as soon as a Cumulative Bulletin is received.

A single card will suffice for the Internal Revenue Manual.

2. Several cards will be required to provide for adequate cross-referencing on some records. Each record should have a main title card. Additionally some records will require cards for one or more sub-titles, a number designation, a Report Symbol, or a subject identifier.

For instance, Document 5342, would have cards as follows :

Main title card : Source of returns—Income taxes.

Number designation : Document 5342.

Report symbol : NO-CP :A-106.

The above three cards would still not identify the record for a searcher who knew only that he wanted some audit statistics, therefore, a subject identifier card would also be necessary under "Audit Statistics."

3. The FOI Reading Room File Cards will be prepared as follows :

*Publication.*—This space will contain the designation under which the card will be filed if it is a Main Title Card, Sub-Title Card, Number Designation Card, or Report Symbol Card (i.e., Source of Returns—Income Taxes or Document 5342 or NO-CP :A-106).

If the card being prepared in a Subject Identifier Card and the subject is not contained in either the Main Title or the Sub-Title, prepare the card as if it were an additional Main Title Card and type the subject (Audit Statistics) above the heavy black line at the top of the card.

If the card being prepared is a Subject Identifier Card and the subject is contained in either the Main Title or Sub-Title, prepare the card as if it were an additional Main Title or Sub-Title Card, and underline the subject identifier. For instance, if the card were for Publication 572, Tax Information on Investment Credit, the Subject Identifier Card would have Tax Information on *Investment Credit* typed in the publication space since the subject is Investment Credit.

*Cross References.*—If only one card is prepared this space is left blank.

If more than one card is prepared and the *Publication* space contains the Number Designation, enter the Main Title in the Cross Reference space.

If more than one card is prepared and the *Publication* space contains anything other than the Number Designation, enter the Number Designation (i.e., Document 5342, Publication 572, etc.) in the Cross Reference space.

If more than one card is prepared and the record does not have a Number Designation, enter the Main Title in the *Cross Reference* space unless the *Publication* space already contains the Main Title. In the latter case leave the Cross Reference space blank.

*Made Public.*—The Internal Revenue Bulletin and records bearing Publication Numbers are intended as public documents from their inception. The *Made Public* space will be left blank for such records.

Whenever the Disclosure Staff submits a record to the reading room which was not previously available to the public, the date on which disclosure of the document was first authorized will be shown in the *Made Public* space.

If there is any doubt about the appropriate date, or if the document was made public before we set up the FOI Reading Room, leave the space blank.

*Field Advised.*—This space will not be used during the initial preparation of file cards. Periodically the Disclosure Staff will issue to the field a listing of reading room materials prepared from the file cards. The first time that a record is included in such a listing, the month and year of the listing will be stamped on the card.

*Shelf Location.*—For each item which has been placed in the stacks, enter the appropriate number 1 thru 14.

For each item which has been placed in a filing drawer, enter the appropriate folder number as fol-1, fol-2, fol-3, etc.

*Other.*—In the future some items which have been designated as reading room materials may be precluded by lack of space, unusual size or shape, or other physical characteristics from actual deposit in the reading room. The location of such items (i.e., room number or office designation) would be entered in the *Other* space.

*V. All materials deposited in the reading room should be stamped:*

#### FOR PUBLIC USE IN THE IRS READING ROOM

##### DO NOT REMOVE

The stamp should be placed on the cover or title page of the record taking care not to obscure any printed matter, except the "Official Use Only" indicia which may be overprinted. It is especially important that every record which was formerly classified "Official Use Only" prominently display the "For Public Use . . ." stamp.

M. FARBENBLUM.

MAY 25, 1973.

#### FREEDOM OF INFORMATION READING ROOM OPERATIONAL INSTRUCTION No. 2

Subject: Organization of F.O.I. reading room.

I. Our Memorandum For File dated March 5, 1973, Organization of F.O.I. Reading Room, is hereby designated F.O.I. Reading Room Operational Instruction No. 1. This designation should be noted in pen and ink at the top of page one of the memorandum copy on file in the Reading Room.

II. We have determined that it is unnecessary for the Reading Room to retain copies of the Congressional Record and the Federal Register. Copies currently on file are to be disposed of and no further copies are to be added.

III. References to the Congressional Record and the Federal Register in Reading Room Operational Instruction No. 1 are to be lined through.

M. FARBENBLUM.

MAY 25, 1973.

#### FREEDOM OF INFORMATION READING ROOM OPERATIONAL INSTRUCTION No. 3

Subject: Use of Freedom of Information Invoice.

I. The Manager, Freedom of Information Reading Room is authorized to sign routine responses granting in full requests involving only reading room materials and requiring no correspondence other than billing and transmittal forms. For the purpose of issuing Form M-6001, Freedom of Information Invoice, the preparing employee will be considered to be acting as Manager, Freedom of Information Reading Room.

II. Requests involving a balance of \$50 or more after the application of any prepayments are to be referred to the Disclosure Staff for resolution.

III. Invoices will be numbered consecutively, beginning a new count each year. No letter or year designation is necessary.

IV. The Description of Records Provided will cite the title or number of the document. If the complete document has not been requested the citation will be

followed by the word PARTIAL in parenthesis without attempting to identify the particular pages involved.

V. The records search fee will not be charged unless special instructions to do so have been received.

VI. If an order for copies is accompanied by an inquiry as to the cost or availability of another record, a simple routine response may be typed in the space above the signature block.

VII. The preparer of Form M-6001 will sign it; the title will always be shown as Manager, F.O.I. Reading Room.

VIII. Form M-6001 will be distributed as follows:

White—Always goes to the requester.

Green—Always goes to Fiscal Section.

Yellow—Goes to the requester if there is an amount due. Goes to Fiscal Section if amount submitted with request results in full payment.

Pink—Always retain in Reading Room file.

Gold—Goes to Fiscal Section if there is a partial payment with the request leaving a balance due. Otherwise it is to be destroyed.

IX. Request letters are destroyed when the requested information has been furnished.

M. FARBERBLUM.

JUNE 18, 1973.

#### FOI READING ROOM OPERATIONAL INSTRUCTION No. 4

Subject: Deposit of proceeds from photocopier.

##### I. EMPTYING THE COIN BOX

1. The coin box of the photocopying machine will be opened every Thursday, after 2:00 P.M. If the contents of the coin box are found to total \$5.00 or more, a deposit will be prepared. If the contents total less than \$5.00, they will be returned to the box, and no deposit will be made.

2. In the event that unusually high usage of the photocopier requires that the coin box be emptied more frequently, an additional deposit may be made as necessary.

##### II. PREPARING THE DEPOSIT

1. Form M-6001 will be used as a record of deposit.

2. Each deposit will be numbered consecutively, beginning with the first deposit of the fiscal year. The deposit number will be entered in the Invoice Number box.

3. The date of deposit will be entered in the Date of Invoice box.

4. The words "Deposit of Proceeds from Photocopier" will be entered in the space for Mailing Address.

5. In the space for Description of Records Provided enter:

Ending meter number-----

Beginning meter number-----

Difference -----

The Beginning Meter Number will be the same as the Ending Meter Number for the prior deposit. The initial Beginning Meter Number will be 2401.

6. On the line for Photocopies, enter the Difference determined above in the Quantity column. Enter the amount being deposited in the Total column and carry down to the Total Cost and Amount Submitted with Request lines. The amount being deposited should equal the Quantity multiplied by \$.10.

7. In the large space to the left of Total Cost enter Prior Deposit Number — Made on (Date) —.

8. The preparer will sign in the box provided.

9. The line reading Chief, A:F:A will be corrected to read Chief, A:F:AF Room 2550.

##### III. DISPOSITION OF DEPOSIT

1. The amount being deposited should be delivered to Fiscal Section, Room 2550, no later than 3:00 P.M. on the day of deposit, together with the White, Green and Yellow copies of Form M-6001.

2. The Fiscal Section will receipt and return the White copy. The Green and Yellow copies will be retained by the Fiscal Section for their purposes.

3. The Pink and Gold copies will be destroyed after the White copy has been receipted.

#### IV. VERIFICATION OF DEPOSIT

1. The receipted White copies of Form M-6001 will be retained in the reading room.

2. The Chief, Freedom of Information Branch, Disclosure Staff, will occasionally witness the preparation of the deposit without giving prior notice of intent. He will also occasionally verify that the Forms M-6001 for deposits are properly prepared and maintained, have been receipted, and that the amounts deposited are consistent with the meter settings. Forms M-6001 will be initialed to reflect the foregoing verification.

M. FARBERBLUM,

Chief, Freedom of Information Branch.

#### FREEDOM OF INFORMATION INVOICE

INVOICE NO.	2
DATE OF INVOICE	July 13, 1973
DATE OF REQUEST	

MAILING ADDRESS:

[ ]

Deposit of Proceeds from Photocopier

[ ]

#### DESCRIPTION OF RECORDS PROVIDED

Ending Meter Number	2550
Beginning Meter Number	2500
Difference	50

TYPE OF CHARGE	UNIT PRICE	QUANTITY	TOTAL
Photocopies, per page . . . . .	\$ .10	50	5.00
Certification of photocopies, per certification . . . . .	1.00		
Printed material, per 25 pages or fraction thereof . . . . .	.25		
Records search, per hour . . . . .	3.50		

Prior Deposit Number 1  
made on July 6, 1973

\$1.00 minimum charge

TOTAL COST 5.00

Less: Amount submitted with request 5.00

AMOUNT DUE

SIGNATURE

Preparer's Name

TITLE

Please, return yellow copy of this Invoice with your remittance to:

Chief, A-F-A-F Room 2550  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D. C. 20221

JULY 9, 1973.

FREEDOM OF INFORMATION READING ROOM OPERATIONAL INSTRUCTION No. 5  
 SUBJECT: FILE OF FREEDOM OF INFORMATION APPEAL RESPONSES.

I. Department Of The Treasury Administrative Circular No. 159 (Revised) dated June 5, 1973, *Disclosure of Records Under The Freedom of Information Act*, states:

*Appeals from denials.*—Files: Copies of both grants and denials on appeal are to be collected in one file open to the public and indexed, to the extent feasible, according to the exemptions asserted and according to the type or subject of the records requested.

II. The Disclosure Staff will forward to the Freedom of Information Reading Room one copy of each response to an appeal under the Freedom of Information Act issued subsequent to June 5, 1973. Each copy provided will be marked in the upper right with the correspondence file number assigned to the case, i.e. 1973 (AG-1) for grants or 1973 (AD-1) for denials.

III. Copies of grants and denials on appeal will be maintained in one or more (as necessary) three ring binders, placed in Stack 5. Within the binders, copies will be arranged by (1) year issued, (2) granted or denied, and (3) numerical order.

IV. A single Form—5993 Freedom of Information Reading Room File Card will be prepared to show "Freedom of Information Act—Grants and Denials on Appeal" in the Publication space, "See F.O.I. Appeals Index" in the Cross References space, and "5" in the Shelf Location space.

V. A separate F.O.I. Appeals Index, consisting of 3" x 5" cards, will be maintained in alphabetical order. Three types of cards will be prepared: Exemption Cards, Title Cards, and Subject Cards.

(1) A separate Exemption Card will be prepared for each exemption cited in a denial upon appeal. The following information will appear on an Exemption Card:

Exemption Cited:  
 Other Exemptions Cited:  
 Title of Record:  
 File No.:  
 Date:

(2) A separate Title Card will be prepared for each record granted or denied upon appeal. The following information will appear on a Title Card for a record granted on appeal:

Title of Record:  
 File No.:  
 Date:

The following information will appear on a Title Card for a record denied on appeal:

Title of Record:  
 Exemptions Cited:  
 File No.:  
 Date:

(3) A separate Subject Card will be prepared for each record granted or denied upon appeal, whenever the initial word under which the Title Card is filed does not adequately identify the subject involved. The following information will appear on a Subject Card for a record granted on appeal:

Subject:  
 Title of Record:  
 File No.:  
 Date:

The following information will appear on a Subject Card for a record denied on appeal:

Subject:  
 Title of Record:  
 Exemptions Cited:  
 File No.:  
 Date:

M. FARBERBLUM.

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
July 8, 1968.

# INFORMATION NOTICE

## PUBLIC READING ROOMS—FREEDOM OF INFORMATION ACT

The purpose of this Notice is to inform Appellate personnel of the establishment of public reading rooms under the Freedom of Information Act and of Appellate Division materials made available therein.

Public Laws 89-487 and 90-23, codified 5 U.S.C. 552, commonly called the Freedom of Information Act, revised section 3 of the Administrative Procedures Act in various respects. One principal revision required that certain materials be made available for public inspection and copying. To provide such services, public reading rooms were established at each office of a Regional Commissioner and at the National Office, staffed by Public Information Division personnel.

Among materials made available in reading rooms is Part VIII of the Internal Revenue Manual, together with applicable Manual Supplements, edited to conform with exceptions provided by law for exclusion of certain types of information. Also made available are certain Service policy statements applicable to Appellate operations which are not within the exceptions.

Procedural regulations for obtaining information under the Act are set forth in 26 C.F.R. 601.701 and 601.702 which have been published in Internal Revenue Bulletins. Internal operating instructions are contained in Manual Supplement 1(19)G-32 and amendments thereto. Requests received by Appellate branch offices for inspection or copying of Appellate Manual materials or Service policy statements should be referred to a Public Information Officer at a reading room location, in accordance with Section 6.02 of Manual Supplement 1(19)G-32.

ARTHUR H. KLOTZ,  
*Director, Appellate Division.*

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
April 2, 1970.

# (Information Notice)

## PUBLIC READING ROOMS—FREEDOM OF INFORMATION ACT

The purpose of this Notice is to inform you of changes in availability of Part VIII, IRM, and related Handbooks in public reading rooms under the commonly called "Freedom of Information Act" (Public Law 89-487—codified 5 USC 552).

Information Notice 68-35, dated July 8, 1968, announced that among materials made available in reading rooms is Part VIII, IRM, together with Manual Supplements, edited to conform with exceptions provided by law for exclusions of certain types of information.

Manual Supplement \*1(19)G-32, Amend. 4, dated February 27, 1970, provides that all IR Manual material and Commissioner's Delegation Orders (other than such material or Orders as are printed in the Internal Revenue Bulletin or Federal Register) shall be available to the public only upon specific request approved by authorized officials. It also provides for removal of all Manual material and Orders presently in public reading rooms.

All requests for Part VIII material and related Handbooks (which have been classified "Official Use Only") will be forwarded to: Disclosure and Liaison Branch Collection Division, National Office (CP:C:D).

Appellate branch offices should furnish reasonable assistance in helping members of the public to properly identify Manual material they wish to request from the National Office.

ARTHUR H. KLOTZ,  
*Director, Appellate Division.*



## APPENDIX III

IRS CHIEF COUNSEL'S CLASSIFICATION OF RECORDS UNDER  
THE FREEDOM OF INFORMATION ACT

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE.  
*Washington, D.C., June 30, 1967.*

To: Sheldon S. Cohen, Commissioner.

From: Lester R. Uretz, Chief Counsel.

Subject: Classification of records under the "Freedom of Information" Act.

Pursuant to my memorandum to you dated March 3, 1967, I am herewith transmitting classification under the so-called "Freedom of Information" Act (P.L. 89-487, 80 Stat. 250), codified as 5 U.S.C. 552 by the Act of June 5, 1967 (P.L. 90-23, 81 Stat. 54), of the records which have been designated by representatives of the Assistant Commissioners and this Office as needing separate documentation under the Act. The classification is set forth in a series of separate memorandums attached hereto (see Attachment II). For the convenience of Service officials who desire to refer to only to those memorandums classifying records within their areas of responsibility, we have (with the exception of the analysis for the exemption of section 552 (b) (5) discussed hereafter), drafted each memorandum to stand alone. This approach has contributed to the length of Attachment II by making it necessary to repeat certain matters. As an added convenience, there is also attached a summary chart setting forth the classification of each record, the name of the requesting office, and the page-reference to the memorandum which analyzes the record in detail (see Attachment I).

My March 3rd memorandum listed forty-seven records for which separate documentation had been requested. We found that in certain cases classification of the same record had been requested by two Assistant Commissioners under different record names. In these cases, the records have been joined in a single memorandum. In several instances it was possible to join in a single memorandum certain records which, although not identical, are substantially similar in nature. In addition, we found it advisable to add several records to the original list and to furnish documentation with respect to the same.

In addition to the classification of particular records, Attachment II also contains an analysis, and sets forth guidelines, with respect to the section 552(b)(5) exemption for "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." This exemption is relied upon heavily in the classification of the Service's records.

In several instances, due to the nature of the matter for which classification was requested, it has proved impossible to assign one definite classification. For example, classes of files or research studies cannot be assigned a single classification because their component documents differ widely in nature. Similarly, field issuances vary so widely in content that they cannot be assigned a uniform classification. In these instances, the attached memorandums endeavor to set forth specific, practical guidelines that can be used in determining whether a particular document within the purview of the request is exempt.

A general explanation regarding the "Freedom of Information" Act may be of assistance to you in considering the attached classification of records. As you know, the Act is a revision of the "public information" section of the Administrative Procedure Act and is effective July 4, 1967.

Section 552(a)(1) requires publication in the Federal Register of certain details of administrative operations of Federal agencies, such as rules of procedure, descriptions of organization, substantive rules and interpretations of general applicability, and general policies. One notable change made in section 552(a)(1) is the addition of a procedure for incorporating matter in the Federal Register by reference.

Under section 552(a)(2) every agency is required to make available for public inspection and copying or, in the alternative, promptly publish and offer for sale, certain final opinions and orders, statements of policy and precedential interpretations which are not published in the Federal Register, and administrative staff manuals and instructions to staff that affect any member of the public. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes such materials available. The material required to be made available pursuant to section 552(a)(2) must be currently indexed and the index must be made available for public inspection and copying. The indexing requirement applies only with respect to matters issued, adopted, or promulgated after July 4, 1967, although, for the convenience of the public, an agency may if it wishes index matters issued, adopted, or promulgated prior to July 4. The section 552(a)(2) materials will be placed in the Service's reading rooms.

Section 552(a)(3) acts, in effect, as a "catch-all" section by providing that all identifiable records other than those made available pursuant to paragraphs (1) and (2) of section 552(a), or exempt under section 552(b), must be made available to any person upon specific request. The Attorney General has pointed out that the burden of identification is with the member of the public who requests the record and that the Congress does not intend to authorize "fishing expeditions". However, he also indicated that agencies should keep in mind that the standards of identification applicable to discovery of records in court proceedings are appropriate guidelines, and that the superior knowledge of an agency as to the contents of its files should be used to further the philosophy of the act of facilitating, rather than hindering, the handling of requests for records. (Attorney General's Draft Memorandum, dated May 15, 1967, p. 56) A court procedure is provided with respect to agency records withheld after request.

Section 552(b) sets forth nine exemptions. Any one of these exemptions, if applicable, operates to remove all or part of a record from the disclosure provisions of section 552. The legislative history makes it clear that if a record does not fall within one of the nine exemptions, it must be made available in the manner prescribed in section 552(a)(1), (2), or (3), whichever is applicable. Thus, the philosophy of the legislation is that all agency records are available to the public unless specifically exempted. Not all of the nine exemptions are absolute prohibitions against disclosure. Rather, the exemptions provide the framework within which executive judgment is to be exercised in deciding which official records may be withheld.

With respect to the exercise of executive judgment, President Johnson upon signing the "Freedom of Information" Act instructed the officials of the Executive branch to take a "constructive approach to the wording and spirit and legislative history" of the Act "and to make information available to the full extent consistent with individual privacy and with the national interest." (Weekly Compilation of Presidential Documents, July 11, 1966, pp. 895-6) In brief, agencies have been instructed by the President that the public interest may best be served in some instances by disclosing, to the extent permitted by other laws, documents which an agency would be authorized to withhold under the literal wording of the exemptions. Accordingly, the classifications in the accompanying memorandums should not always be construed as meaning that the exemptions *must* be invoked. As the Attorney General stressed in the introduction to his May 15, 1967 Draft Memorandum on the Act (p. viii), agency officials are expected to construe and apply the limitations of paragraphs (1) and (2) of section 552(a) and the nine exemptions of section 552(b) in the liberal spirit described by the President in his signing statement. The President also stated that the "bill in no way impairs the President's power under our Constitution to provide for confidentiality when the national interest so requires." *Ibid*.

The attached classification memorandums mention those exemptions which would most likely apply to the general category of records being discussed in the individual memorandum. However, depending on the contents of a particular record, additional exemptions may also apply.

Neither the Act nor its legislative history deals with the problem of how to treat a large single record which contains both exempt and non-exempt material. However, the Attorney General has indicated in connection with his discussion of section 552(a)(2), that when this situation occurs the exempt material should be deleted and the non-exempt material made available. (Attorney General's

Draft Memorandum, dated May 15, 1967, pp. 37-38) It seems reasonable that this approach could also be used in connection with requests under section 552(a) (3).

Some final general observations should be made concerning the "Freedom of Information" Act. The Act is, of necessity, designed to apply to all agencies of the Executive branch regardless of size or nature of activities. Thus, its provisions have not been "tailored" to the specific needs or functions of any agency. Accordingly, the precise application of many of the provisions of the Act to the specific functions of the Internal Revenue Service is far from clear. In turning to the legislative history for clarification, not all of the explanations in the committee reports are in complete harmony. The Attorney General's Draft Memorandum, dated May 15, 1967, to all agencies has made a notable effort to correlate the statutory language with the legislative history. However, as the Attorney General points out (p. iv), "some of the statutory provisions allow room for more than one interpretation, and definitive answers may have to await court rulings."

To facilitate ease of reference, the following abbreviated citations to the legislative history of the Act are used in the attached classification:

"S. Rept." for S. Rept. 813, 89th Cong., (1965).

"H. Rept." for H. Rept. 1497, 89th Cong., (1966).

"Attorney General" for Attorney General's Draft Memorandum dated May 15, 1967.

Section references to the so-called "Freedom of Information" Act are expressed in terms of its codification as 5 U.S.C. 552.

#### Attachments:

I—Summary chart.

II—Classification memorandums.

Addendum.

### ATTACHMENT I

#### SUMMARY CHART OF CLASSIFIED RECORDS<sup>1</sup>

Record	Office	Page	Classification
1. Subject files in the public information division.....	A	1	Pt (a)(3); pt (b)(2), (3), (5).
2. Instructor and student guides; district and regional office issuances; regional commissioner, district director, service center, memorandums and circulars; division operating procedures; technical interim procedures.....	A, CP, PR, T	3	Most (a)(3); some (a)(2); others (b) (2).
3. National office review program.....	A	6	Most (b)(5); few (b)(2).
4. Attitude survey files.....	A	7	Pt (a)(3); pt (b)(2), (4), (5), (6).
5. Contracts with commercial suppliers and related bids.....	A	9	Some (a)(3); some (b)(4).
6. Suspense files; audit suspense digest.....	CP	10	(b)(2), (3), (4), (6).
7. Records of stock valuations.....	CP	12	(b)(3), (4).
8. Master file magnetic tape records; microfilm indexes and settlement registers.....	D	13	(b)(3), (4), (6).
9. Internal audit reports and related workpapers; informal monthly reports to the Commissioner; internal audits; Commissioner's annual report to the Secretary covering internal audit activities.....	I	15	(b)(2), (3), (4), (5).
10. Recommendations for improvements on procedures, methods and programs to various assistant commissioners; regional financial accomplishment reports and summaries thereof.....	I	17	(b)(2), (3), (4), (5).
11. Taxpayer complaint files.....	I	19	(b)(2), (3), (4), (5), (6).
12. Joint internal audit—internal security special assignment files.....	I	21	(b)(3), (4), (5), (6), (7).
13. Taxpayer compliance measurement program and related documents; planning, programming, and budgeting system; research studies initiated to gain new knowledge regarding problems of tax compliance or tax administration.....	PR	24	(b)(2), (3), (4), (5).
14. Inactive records.....	PR	26	Same as active records.
15. Revenue rulings.....	T	27	(a)(2).
16. Letter rulings; determination letters; closing agreements; unpublished General Counsel memoranda; technical advice memorandums (issued by both chief counsel and Assistant Commissioner (technical)).	T, CP, CC	30	Some (b)(3), (4), (6), (9); others add (b)(2), (5).
17. Revenue procedures.....	T	34	(a)(2), some (a)(1).
18. Technical field conference reports.....	T	36	Most (b)(5), few (b)(2), (3), (4), (6).
19. Technical coordination reports.....	T	38	(b)(5); few (b)(2), (3), (4), (6).

Footnote at end of table.

SUMMARY CHART OF CLASSIFIED RECORDS<sup>1</sup>—Continued

Record	Office	Page	Classification
20. Postreview memorandums.....	T	39	Many (b)(5); some (b)(2), (3), (4), (6).
21. Technical subject directory.....	T	40	(a)(3).
22. Tax briefs.....	T	41	(a)(3).
23. Earnings and profits guide.....	T	43	(b)(5).
24. Engineering citator.....	T	44	(a)(3).
25. Engineers' coordination digest.....	T	45	(b)(2), (5).
26. Transmittal memorandum for regulations; technical memorandum for regulations.....	CC	46	(b)(5); some (b)(3), (4), (9).
27. Comments from the public on proposed regulations.....	CC	47	(b)(4).
28. Legislative files.....	CC	48	(b)(5).
29. Actions on decisions.....	CC	49	(b)(5); (b)(2).
30. Records under the RIRA system.....	CC	51	(b)(5); (b)(2).
31. Chief counsel brief digests.....	CC	56	(a)(3).
32. Tax Court division manual.....	CC	57	(b)(2).
33. Detailed discussion relating to exemption 552(b)(5).....	CC	59	Classification not applicable.

<sup>1</sup> Caution: This summary chart is designed to provide an overall perspective of the classification. However, it should not be used as a substitute for reading the memorandums set forth in attachment II, since such memorandums frequently contain important qualifications and limitations. In addition, the memorandums should be read in the light of the discussion contained in the transmittal memorandum.

ATTACHMENT II<sup>1</sup>

## MEMORANDUMS OF CLASSIFICATION OF INTERNAL REVENUE SERVICE RECORDS UNDER P.L. 89-487 (80 STAT. 250), THE "FREEDOM OF INFORMATION" ACT, 5 U.S.C. 552

## SUBJECT FILES IN THE PUBLIC INFORMATION DIVISION

Subject files, as such, are not exempt from disclosure. However, certain material contained in subject files may be exempt under section 552(b)(2), (3) or (5). In view of the diverse nature of the material contained in the subject files, the status of a great deal of such material will have to be determined when requests are received under section 552(a)(3). It is possible to point out the exemptions which are likely to apply to material in the files and to classify certain of the more important material.

It is understood that the bulk of the material contained in the Public Information Division subject files consists of newspaper, magazine, and wire service clippings relating to the Service or matters of interest to the Service. These clippings are categorized for future use in a number of ways including categorization by subject, key name, writer or author, source, and date. There is some basis for contending that the clippings in the subject files are not records within the meaning of section 552. Although the term "records" is not defined in section 552, the Attorney General states that Congress' definition of the term in the Act of July 7, 1943, Sec. 1, 57 Stat. 380, 44 U.S.C. (1964 Ed.) 366, is applicable. Under this definition, the word "record" would exclude library material acquired and preserved solely for reference purposes and extra copies of documents preserved only for convenience of reference. (Attorney General, pp. 52-53.) Accordingly, it is at least arguable that newspaper clippings preserved by the Service for reference purposes for its own convenience are not records, and, therefore, need not be disclosed. However, it must also be noted that there is a counter-argument that newspaper clippings become Service records at the time that they are clipped from their source document and placed in the file, and, as such, would be subject to disclosure. In any event, it is assumed that, in the usual case involving merely news clippings alone, they would be readily disclosable.

It is understood that subject files may contain memorandums which set forth operating rules or guidelines to be used by Service personnel in the discharge of their duties. It is possible, for example, that in the preparation of a news release or response to a request for information, recourse may be had to such memorandums by Service personnel as background material, and the memorandums are retained in the subject files. By virtue of section 552(b)(2), matter of this type found in the file would not have to be disclosed if disclosure would substantially prejudice the effective performance of the Service's functions. (Attorney General, p. 71)

<sup>1</sup> NOTE.—To be read in conjunction with the transmittal memorandum.

Under section 552(b) (3), the provisions of section 552(a) are not applicable to matters that are "specifically exempted from disclosure by statute." For purposes of the Internal Revenue Service, there are a number of statutory provisions providing protection from disclosure, such as sections 6103, 6104, and 6106 of the Code and the penalty provisions of section 7213 of the Code and 18 U.S.C. 1905. To the extent that material contained in subject files is protected by these provisions, it is also protected from the publicity requirements of section 552(a). However, it must be pointed out that when information within the ambit of a secrecy statute becomes a matter of public knowledge in accordance with law, the statutory exemption no longer applies to that information.

The subject files also may contain documents falling within the purview of section 552(b) (5) as "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." For example, in the process of responding to a request for information, Public Information Division personnel may request advice from another office of the Service with regard to the content of the response. The reply from the other Service office may be in the form of an intra-agency memorandum setting forth an advisory opinion or advisory recommendation with regard to the appropriate response to the request for information. This type of intra-agency memorandum would be subject to a privilege from discovery and is thus not *routinely* disclosed through the discovery process. Accordingly, the section 552 (b) (5) exemption (discussed in detail in a latter portion of this memorandum) may be raised with respect to this type of memorandum.

INSTRUCTOR AND STUDENT GUIDES; DISTRICT AND REGIONAL OFFICE ISSUANCES, REGIONAL COMMISSIONER, DISTRICT DIRECTOR, SERVICE CENTER, MEMORANDUM AND CIRCULARS; DIVISION OPERATING PROCEDURES; TECHNICAL INTERIM PROCEDURES

Because of the large number and varied nature of these documents, *i.e.*, over 500 instructor and student guides and several hundred National Office and field issuances, it is impossible to assign a uniform classification to them. However, an attempt has been made to set forth as precisely as possible guidelines which may be used in their classification by the functional offices involved.

It should be noted that the classification of District and Regional Office Issuances was requested by the Assistant Commissioner (Compliance). The documents are of the same nature as Regional Commissioner, District Director and Service Center Memorandums and Circulars, the classification of which was requested by the Assistant Commissioner (Planning and Research).

The nine exemptions in section 552(b) apply across the board and govern all the material in section 552(a). The first consideration, therefore, is to determine which exemptions, if any, would operate to protect these documents from disclosure. It is concluded that section 552(b) (2) offers the principal protection for most of these documents.

Under section 552(b) (2) the provisions of section 552(a) are not applicable to matters that are "related solely to the internal personnel rules and practices of an agency." Not only is the precise meaning of the statutory language unclear, but the applicable committee reports appear inconsistent. The Senate report explains that this exemption is applicable to such matters as "rules as to personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and the like." (S. Rept., p. 8) On the other hand, the House report appears to considerably broaden the exemption by not restricting it to just minor internal documents relating to matters of personnel administration and by explaining that the exemption would exempt from public disclosure such matters as "operating rules, guidelines, and manuals of procedure for Government investigators or examiners." The House report cautions, however, that the exemption would not cover all matters of internal management such as employee relations, working conditions and routine administrative procedures. (H. Rept., p. 10) In line with this interpretation, Congressman Gallagher explained on the House floor that section 552(b) (2) is intended to protect from disclosure such documents as income tax auditor's manuals. (112 Cong. Record 13026, June 20, 1966).

The Attorney General, in attempting to correlate the seemingly inconsistent committee reports, emphasized that the section 552(b) (2) exemption is designed to permit the withholding of agency records relating to management operations to the extent that the proper performance of necessary agency functions requires

such withholding. The memorandum points out, however, that the exemption is not to be invoked to authorize any denial of information relating to management operations when there is no such need for withholding. (Attorney General, pp. 71-72)

The House report version of the exemption is obviously aimed at providing more of a basis for non-disclosure by agencies than the Senate report version. In applying the exemption to particular documents, it is believed permissible to utilize the House report's explanation in preference to the more restrictive interpretation in the Senate report.

After reviewing the legislative history of section 552(b) (2) and the discussion by the Attorney General, it is clear that it is not possible to assign an exempt classification under section 552(b) (2) to all instructor and student guides, Division Operating Procedures, Technical Interim Procedures, and field issuances. For example, many of these constitute matters of internal management which are in the nature of "routine administrative procedures" and, therefore, even under the liberal House report interpretation, not protected by the section 552(b) (2) exemption.

In determining whether the exemption applies to specific records the following guidelines should be observed:

(1) If the record is an operating rule, procedure or guideline for a Service investigator or examiner, it would be exempt under section 552(b) (2). Since the terms "operating rules, procedures and guidelines" are broad and vague and might cause an exemption for material which there is obviously no common sense reason to exempt, these terms should be construed in the context of criteria or guidelines in auditing or inspection procedures, or in the selection or handling of cases, such as operational tactics, allowable tolerances, or criteria for defense, prosecution, or settlement of cases. (Cf. H. Rept., pp. 7-8.)

(2) If the document relates to employee relations or working conditions, there would be no justification for exempting it under section 552(b) (2).

(3) If the particular record represents merely a routine administrative procedure, it would not be exempt. As noted above, the exemption is not to be invoked to authorize any denial of information relating to management operations when there is no such need for withholding.

It is not likely that any of the other section 552(b) exemptions are applicable to these records, although such a possibility cannot be ruled out entirely. Section 552(b) (5) provides an exemption for "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." However, this exemption relates primarily to documents which contain the advisory opinions and deliberations of agency personnel and, therefore, would not normally be applicable to the items under consideration here. Reference is made to the portion of this memorandum relating to section 552(b) (5).

If neither section 552(b) (2) nor any of the other exemptions apply, it is necessary to determine under what provision of section 552(a) disclosure is required. Based on the material that has been screened, it would appear that the bulk of the documents constitute agency records which would only be available upon specific request under section 552(a) (3). However, it is possible that some of the records may constitute section 552(a) (2) material which must be made available for public inspection and copying. The initial question in determining whether National Office or field issuances or instructor or student guides fall within the ambit of section 552(a) (2) is whether they establish standards or contain similar information to staff affecting the public which are not publicly available elsewhere. (Attorney General, p. 35.)

Where section 552(a) (2) material is involved, the Attorney General has indicated that all agencies should reexamine all section 552(a) (2) materials to ascertain whether they include standards and instructions which necessarily cannot be disclosed to the public. After any confidential standards and instructions are deleted, the documents should be made available under section 552(a) (2). (Attorney General, pp. 37-38.)

#### NATIONAL OFFICE REVIEW PROGRAM

Documents related to the National Office Review Program are deemed to fall primarily within the purview of section 552(b) (5) which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the

agency." Section 552(b)(5) is discussed in detail elsewhere in this memorandum, wherein is referenced the status of internal communications under the Federal discovery rules together with the degree of security afforded.

In brief, in order for a document to come within the scope of section 552(b)(5) it must contain deliberations or advisory opinions, as opposed to mere factual material. National Office Review Program documents are of the type exempted by section 552(b)(5) since they are concerned generally with internal management problems, and especially with the manner in which each region carries out the various pre-determined management policies and programs of the Service. The program has the primary purpose of achieving closer understanding between the National Office and the regions by providing the Regional Commissioners an opportunity to express their opinions on Service programs and policies and by providing National Office officials an opportunity for ensuring effective and uniform understanding of programs and policies. Matters considered would include the following: quality vs. production in regard to work performed by revenue agents and officers, the integrity program, redeployment of personnel, the OGD program, data processing, per diem rates, the fiscal program, attitude surveys, courses and facilities in regard to the various training programs, the recruitment program, equal employment, and the securing of cars for enforcement personnel.

Many documents generated under the National Office Review Program also fall within the purview of section 552(b)(2) which exempts from disclosure internal rules and practices, such as operating rules, guidelines, and matters of internal management of the type which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant agency function. (Attorney General, pp. 71-72.)

#### ATTITUDE SURVEY FILES

Attitude survey files in their entirety are not exempt from public disclosure under the Act. However, certain material contained in the files may be exempt under section 552(b)(2), (4), (5), or (6). In view of the diverse nature of the material contained in the attitude survey files, the status of a great deal of such material will have to be determined when requests are received under section 552(a)(3). It is possible to point out the exemptions which are likely to apply to material in the files and to classify certain of the more important material.

Based on the statutory language of section 552(b)(2) alone, which exempts matters related "solely to the internal personnel . . . practices" of an agency, it might appear that the entire attitude survey files are protected from disclosure on the ground that they relate solely to internal personnel practices. However, the legislative history of section 552(b)(2) does not support such an interpretation.

Section 552(b)(2) is designated primarily to protect those rules and practices which are for the guidance of agency personnel only, including rules and practices which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant agency function. (Attorney General, p. 71.) Thus, the House report cites as examples of protected matters "[O]perating rules, guidelines, and manuals of procedure for Government investigators or examiners." (H. Rept., p. 10.) The House report further states that the exemption does not cover matters of internal management such as "*employee relations and working conditions*." (*Emphasis added.*) According, since attitude surveys normally constitute matter related to employee relations and working conditions rather than matter related to the guidance of personnel in the performance of necessary Service functions, the applicability of section 552(b)(2) to the materials contained in the attitude survey files would be limited.

Section 552(b)(4) exempts from disclosure information submitted to an agency under a pledge of confidentiality. (H. Rept., p. 10.) Since the Service has pledged that the write-in answers will not be identified with a particular employee, such answer sheets are confidential information protected from disclosure under section 552(b)(4). However, since the write-in answer sheets are edited to remove identifying material and retyped, the typed product has lost its confidential nature and thus its status under section 552(b)(4). Similarly, while the write-in answer sheets may contain information the disclosure of which would constitute an invasion of personal privacy protected under section 552(b)(6), the edited write-in answer sheets have no claim of protection under section 552(b)(6).

A number of documents contained in the attitude survey files would appear to constitute intra-agency memorandums protected under section 552(b)(5). Management reports, employee reports and special study reports would all constitute

intra-agency memorandums. However, in order to come within the section 552 (b) (5) exemption, such memorandums must be of the type "which would not be available by law to a party other than an agency in litigation with the agency." Since the management and special study reports and, in a more limited sense, the employee reports contain deliberations, opinions, and recommendations of management personnel with regard to such matters as the improvement of management operations and elimination of employee dissatisfaction, such reports are privileged from discovery and are thus not *routinely* available to a private litigant. Accordingly, the section 552 (b) (5) exemption would apply to such reports. Reference is here made to the portion of this memorandum relating to the section 552 (b) (5) exemption for a detailed discussion of the status of internal communications under the Federal discovery rules together with the degree of security afforded.

If none of the exemptions are applicable to a document contained in the attitude survey files, then it is concluded that such document must be made available upon specific request pursuant to section 552 (a) (3).

#### CONTRACTS WITH COMMERCIAL SUPPLIERS AND RELATED BIDS

There is no exemption which would remove contracts with commercial suppliers or all related bids from the disclosure requirements of section 552 (a). Although no independent study of Internal Revenue Service contracts has been made, it is assumed that a large proportion are for routine supplies and materials and do not involve information of the type which must be kept confidential. However, in the event there are a few contracts which contain such information, the section 552 (b) (4) exemption is discussed.

Section 552 (b) (4) exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The legislative history of section 552 (b) (4) makes clear an intention to protect information which the Government has in good faith obligated itself not to disclose as well as information which is given to the Government in confidence. (H. Rept., p. 10) There are indications that bids, particularly bids or offers in the case of procurement by negotiation, may contain information which has been impressed with confidentiality by commercial suppliers. Moreover, in the case of procurement by formal advertising, it appears that the Government has by regulation pledged that it will honor restrictions against public disclosure placed upon descriptive literature by a commercial supplier. Section 1-2.404-4, 41 CFR, Federal Procurement Regulations. Similarly, in the case of procurement by negotiation, the regulations state that the Government will not disclose "an offeror's cost breakdown, profit, overhead rates, trade secrets, or other confidential business information." Section 1-3.103 (b), 41 CFR, Federal Procurement Regulations. To the extent that a commercial supplier has clearly given trade secrets or commercial or financial information to the Service in confidence with good reason to believe that the Service will honor such confidence, the section 552 (b) (4) exemption will apply.

#### SUSPENSE FILES; AUDIT SUSPENSE DIGEST

The suspense files and Audit Suspense Digest maintained by the Audit Division in the National Office fall within the purview of section 552 (b) (2), (3), (4), and (6) and are, therefore, protected from disclosure.

The suspense files relate to cases held in audit suspense involving issues pending court decision or National Office action. In these cases audit action is held in abeyance because the only issue in dispute is the same as, or similar to, that involved in a pending court case or because of some necessary National Office action relating to the issuance of regulations or the outcome of a special study. When the controlling court decision becomes final or National Office action is completed, the case is returned to the field with instructions or guidelines to enable the field to process the years or cases held in suspense in accordance with the judicial or National Office determination.

Since the suspense files contain confidential tax information about the taxpayer's return, they fall within the scope of section 552 (b) (3) which relates to information specifically exempted from disclosure by statute. The primary statutes applicable to such returns would be section 6103 of the Code and the penalty provisions of section 7213 of the Code and 18 U.S.C. 1905. Further, the



applicability of the exemptions in section 552(b)(4) and (6) is apparent since the suspense files contain commercial or financial information which is privileged or confidential and which would not customarily be made public by the taxpayer, and other personal or private information the disclosure of which would clearly invade the privacy of the particular taxpayer.

On a quarterly basis, the National Office issues an Audit Suspense Digest to alert the Service to the principal suspense issues and to provide a means of evaluating their significance and insuring uniform audit treatment. It also provides statistical data on the extent of the suspension of audit action and its relative tax significance. This portion of the digest summarizes the suspense issues, the position of the National Office and criteria and instructions for handling similar cases. In addition, a narrative might summarize a proposed revmated tax involved. An important part of the digest is a narrative of those cases involving major suspense developments. The narrative discusses particular issues, the position of the National Office and criteria and instructions for handling similar cases. In addition, a narrative might summarize a proposed revenue ruling in the final stages of review or discuss contemplated changes in a proposed regulation as it relates to an issue in suspense.

It is clear that since the digest contains criteria, guidelines and instructions to staff in processing specific cases under audit consideration, it represents the type of document protected by section 552(b)(2) relating to internal personnel rules and practices of an agency. The legislative history of this exemption makes it clear that it is intended to protect from disclosure operating rules, guidelines, and manuals of procedure of Government investigators and examiners. (H. Rept., p. 10) Since these terms are broad and vague, they are construed in the context of criteria or guidelines in auditing or inspection procedures, or in the selection or handling of cases, such as operational tactics, allowable tolerances, or criteria for defense, prosecution or settlement of cases. (H. Rept., pp. 7-8) Tested under these standards, material in the Audit Suspense Digest would appear to relate to the exemption in section 552(b)(2).

In addition, the exemptions set forth in section 552(b)(3), (4) and (6) are applicable to the Audit Suspense Digest for the same reasons already discussed herein in connection with suspense files.

Consideration was given to the possibility that the digest constituted an instruction to staff that affects any member of the public and, therefore, under section 552(a)(2)(C) would have to be made available for public inspection and copying. However, the House report explaining section 552(a)(2) limits its scope by providing that an agency may not be required to make available those portions of its instructions which set forth criteria or guidelines for the staff in auditing or inspection procedures, or in the selection or handling of cases, such as operational tactics or allowable tolerances. (H. Rept., pp. 7-8) Examination of the material in the digest establishes that it does contain this type of material and, accordingly, does not constitute the type of instruction to staff that has to be made available for public inspection and copying under section 552(a)(2)(C).

#### RECORDS OF STOCK VALUATIONS

Stock valuation records are exempt under section 552(b)(3) and (4).

Each District Director maintains stock valuation records showing valuations for estate and gift tax and income tax purposes of the stock of unlisted, closely held corporations disclosed in income returns filed by the corporation. In addition, records are maintained on the financial condition of unincorporated business disclosed in returns filed by the unincorporated businesses. This information is used to verify the valuation data on estate and gift tax and income tax returns.

Since stock valuation records are formulated from income returns filed with the Service, the primary exemption would be section 552(b)(3) which exempts material "specifically exempted from disclosure by statute." The nondisclosure statutes applicable to such returns would be sections 6103 and 7213 of the Code.

In addition, because these records contain highly confidential and detailed financial information, the disclosure of which would result in irreparable harm to the corporation in its dealings with creditors and competitors, they represent the very class of documents protected by the exemption in section 552(b)(4).

## MASTER FILE MAGNETIC TAPE RECORDS; MICROFILM INDEXES AND SETTLEMENT REGISTERS

These materials fall within the purview of section 522(b) (3), (4), and (6) and are, therefore, protected from disclosure under the Act.

Master file magnetic tape records contain a continuously updated record of tax data for each taxpayer, identifying the particular taxpayer, all returns for which he is liable, when and where returns have been filed, the amount and status of each liability and audit results. They are maintained either in account number sequence or by Social Security number. All tax return data, assessments, debit and credit transactions for each tax account are posted to the master file.

Periodically, information is taken from the magnetic tape and placed on microfilm. The microfilm record is then sent to each Service Center and District Office where it is used to answer queries from taxpayers. Print-outs of a particular taxpayer account are also available from the microfilm. The microfilm record, therefore, is the readable copy of the magnetic tape information.

Assessment and settlement data are a product of electronic processing of the various tax transactions into the taxpayer accounts. These transactions include the processing of all types of returns, the application of remittance credits, depository receipt credits, and transferred credits to outstanding liabilities on applicable master file accounts, account adjustment transactions, tax liability adjustments, refunds to taxpayers, and other transactions affecting master file accounts. The processing of all these transactions into the taxpayer accounts results in assessment and settlement data output.

Current deficiency and other assessments are individually recorded on the taxpayer accounts. Settlement registers are generated on a weekly basis and all assessments are separately identified on the applicable Register of Settlements for each district office. For each Register of Settlements printed each week, the Regional Service Center prepares and certifies an Assessment Certificate. The certified Assessment Certificate authenticates and dates, as officially assessed, each assessment item listed on the related Register of Settlements. In effect, the settlement registers are an itemization of assessment and settlement transactions relating to master file accounts.

Under section 552(b) (3), the provisions of section 552(a) are not applicable to matters "specifically exempted from disclosure by statute." The statutory provisions providing certain tax returns and related tax information with protection from disclosure are sections 6103, 6104 and 6106 of the Code and the penalty section 7213 of the Code and 18 U.S.C. 1905. These provisions would likewise protect magnetic tape records, microfilm indexes, and settlement registers which contain such information.

There are certain types of tax returns which are "not covered" by the provisions of sections 6103, 6104, and 6106 of the Code, such as those relating to the Federal Insurance Contributions Act and certain excise tax matters. For these "non-covered" tax returns, disclosure may be withheld under section 552(b) (4) which exempts "commercial or financial information obtained from any person and privileged or confidential." This exemption is designed to protect the type of information which would not customarily be disclosed by the person from whom it was obtained. (H. Rept., p. 10) It is believed that the information in these "non-covered" returns is of this type. However, it must be noted that since there are no statutory provisions specifically covering the disclosure of these returns, the Commissioner may, in his discretion, disclose them in appropriate cases. Section 552(b) (4) imposes no limitation on that discretion.

Additionally, section 552(b) (6) may be applicable in appropriate cases. This section permits the withholding of private or personal information which if disclosed to the public would amount to a clearly unwarranted invasion of privacy of any person, including members of the family of the person to whom the information pertains. (Attorney General, pp. 79-80) Further clarification of the scope of this provision may come as a result of litigation; however, at this point, disclosure of such financial information as the tax affairs of a person may be covered under section 552(b) (6).

INTERNAL AUDIT REPORTS AND RELATED WORKPAPERS; INFORMAL MONTHLY REPORTS TO THE COMMISSIONER RE INTERNAL AUDITS; COMMISSIONER'S ANNUAL REPORT TO THE SECRETARY COVERING INTERNAL AUDIT ACTIVITIES

The documents described below fall within the purview of one or more of the following exemptions: section 552(b) (2), (3), (4) or (5).

Internal Audit reports point out the operating deficiencies disclosed during the course of each internal audit, including a summary of management's action on each of the deficiencies reported. These reports are designed to reflect whether the prescribed policies and procedures and the system of review and management controls are adequate and functioning properly. Related workpapers contain various analyses, summaries, memorandums, correspondence and other written material relative to the internal audit report. Such documents frequently include the identity of specific taxpayers, tax cases, tax information and other matters of a confidential nature.

Each month the Assistant Commissioner (Inspection) reports the results of the internal audit program to the Commissioner in summary, informal report form. This report is in narrative form and highlights the more important findings or conditions disclosed by the internal audits. The contents also relate the Service's actions that are taken on those findings or conditions.

Annually, the Commissioner submits a report to the Secretary summarizing the results of the Service's internal audit program. This contains highlights of the most significant internal audit findings.

Section 552(b) (2) exempts internal rules, practices and procedures which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant Service function. (Attorney General, p. 71) The examples cited in the House report (p. 10) are "operating rules, guidelines, and manuals of procedure for Government investigators or examiners." In general, section 552(b) (2) is designed to permit the withholding of agency records relating to management operations to the extent that the proper performance of necessary Service functions requires such withholding. (Attorney General, pp. 71-72) Thus, to the extent that the documents in question contain data relative to such operating rules and guidelines, they would be exempt from disclosure.

It is clear that where the reports pertain to income or other tax information protected by a statute, such as sections 6103 or 7213 of the Code, they thereby fall within the purview of section 552(b) (3) relating to information specifically exempted from disclosure by statute.

Section 552(b) (4) authorizes the withholding of documents if they contain "commercial or financial information obtained from a person and privileged or confidential." This is information which would not customarily be made public by the person from whom it was obtained by the Government. (Attorney General, pp. 74-76)

As to section 552(b) (5), it appears that virtually all of these documents would be covered by this exemption for inter-agency or intra-agency memorandums which would not be available by law to a party other than an agency in litigation with the Service. Section 552(b) (5) is discussed in detail elsewhere in this memorandum, wherein is referenced the status of internal communications under the Federal discovery rules together with the degree of security afforded. In brief, the memorandums and reports in question are of the type exempted by section 552(b) (5) since they are concerned generally with an analysis of the Service's audit and collection activities, with recommended Service action relative thereto.

RECOMMENDATIONS FOR IMPROVEMENTS ON PROCEDURES, METHODS AND PROGRAMS TO VARIOUS ASSISTANT COMMISSIONERS; REGIONAL FINANCIAL ACCOMPLISHMENT REPORTS AND SUMMARIES THEREOF

The documents described below fall within the purview of one or more of the following exemptions section 552(b) (2), (3), (4) or (5).

Recommendations for improvement generated by the Inspection Service have characteristics analogous to internal audit reports, yet relate only to one isolated problem area. Recommendations are prompted by circumstances indicating that a change is necessary in practices and procedures promulgated by the National

Office. In general, there would be a showing as to the deficiencies in a particular facet of the Service's operation. Problem areas would include assessment, refund or interest computations. Rarely would the recommendations be concerned with investigative data. The files in question would contain a description of the recommendations and accomplishments on adopted recommendations. Specific cases containing taxpayers' names, years and tax accounts involved are cited to illustrate the basis for the recommendation.

Regional financial accomplishment reports are primarily based upon data derived from a review of closed cases as handled by the Audit, Intelligence, Collection, and Appellate Divisions. In some instances, reference may be made to cases currently being processed. The reports are submitted quarterly, and contain details on actual and potential financial accomplishments resulting from corrective actions taken or to be taken on findings filed by regions and districts in which reported. A brief description of the deficiency reported and the corrective action is outlined. Some relate to general conditions, but most findings relate to specific cases, including names of taxpayers, years and amounts involved. For Audit findings, this includes amounts realized from reexaminations of reopened years, and examinations of related cases and subsequent years. For Collection activities, specific taxpayer cases are also cited including years and amounts involved in reactivated accounts written-off, delinquent tax accounts and delinquent return investigations. In brief, these documents reflect the activity of the Inspection Service in reviewing Service procedures to ascertain where a breakdown in such procedures has resulted in monetary losses, and the corrective action taken relative thereto. As a consequence, reference would be made not only to a named taxpayer, but likewise to his specific individual tax situation.

The legislative history indicates that the exemption for matters which are related solely to the "internal personnel rules and practices of an agency," in section 552(b) (2), includes matters which are for the guidance of agency personnel only, such as internal rules and practices which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant Service function. (Attorney General, p. 71) The examples cited in the House report (p. 10) are "operating rules, guidelines, and manuals of procedure for Government investigators or examiners." It is noted, however, that the House report cautions that not all matters of internal management would be exempt, such as employee relations, working conditions, or routine administrative procedures. In general, section 552(b) (2) is designed to permit the withholding of agency records relating to management operations to the extent that the proper performance of necessary Service functions requires such withholding. (Attorney General, p. 72) Thus, to the extent that the documents in question contain data relative to such operating rules and guidelines, the material is exempt from disclosure.

It is clear that most of these documents contain confidential tax information and may thereby fall within the scope of section 552(b) (3), that is, information specifically exempted from disclosure by statute. Thus, to the extent that these documents contain the type of information protected by section 6103 and similar sections of the Code, and the penalty provisions of section 7213 of the Code and 18 U.S.C. 1905, they would be exempt from disclosure under section 552(b) (3).

Section 552(b) (4) authorizes the withholding of documents if they contain "commercial or financial information obtained from a person and privileged or confidential." This is information which would not customarily be made public by the person from whom it was obtained by the Government. Section 552(b) (4) may be read in the disjunctive, so as to cover not only privileged commercial and financial information, but all information which is customarily privileged or is appropriately given to an entity in confidence. (Attorney General, pp. 74-76) Certain information contained in the instant documents may fall within this latter criteria.

As to section 552(b) (5), it appears that many of these documents would be covered by this exemption for intra-agency memorandums which would not be available by law to a party other than an agency in litigation with the Service. Section 552(b) (5) is discussed in detail elsewhere in this memorandum, wherein is referenced the status of internal communications under the Federal discovery rules together with the degree of security afforded. In brief, the memorandums and reports in question are of the type exempted by section 552(b) (5) since they are concerned generally with an analysis of the Service's audit, enforcement and collection activities, with recommended Service action relative thereto.

## TAXPAYER COMPLAINT FILES

Documents included within a taxpayer complaint file are deemed to fall within the purview of one or more of the following sections: 552(b)(2), (3), (4), (5), or (6).

At the outset it should be noted that there are certain taxpayer complaint letters for which the Service would be unable to assert any of these exemptions. This occurs, for example, where the complainant has already made the substance of his letter generally public or where the letter states that the complainant does not care if the letter is made public. This memorandum refers only to those letters which have not been made public and in which no such statement is found.

Taxpayer complaint letters are, for the most part, concerned with potential problems in internal Service procedures or controls as well as errors in handling a taxpayer's case. These letters may relate to any facet of the operations of the Service, *i.e.*, delays in making refunds, continuous letters demanding payment where a tax obligation has already been paid, or improper conduct by an officer or employee of the Service. The letters may contain confidential tax information pertinent to the particular complainant.

Procedurally, the letter of the complainant will be acknowledged and a report subsequently prepared analyzing the particular problem. Such reports will contain the results of the field review, including, where appropriate, detailed tax information relative to the complainant's particular problem, and, in many instances, comprehensive information outlining how a breakdown in Service procedures has affected the complainant. The report will often make recommendations as to steps needed to correct human errors, as well as the revision of established Service procedures. In the latter instance, the matter is referred to an appropriate official along with a discussion of the matters disclosed in the review, and recommendations as to adjustments, changes in procedures, or controls.

The legislative history indicates that the exemption for matters which are related solely to the "internal personnel rules and practices of an agency," in section 552(b)(2), includes those matters which are for the guidance of agency personnel only, such as internal rules and practices which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant Service function. The examples cited in the House report (p. 10) are "operating rules, guidelines, and manuals of procedure for Government investigators or examiners." It is noted, however, that the House report cautions that not all matters of internal management would be exempt, such as employee relations, working conditions, or routine administrative procedure. In general, section 552(b)(2) is designed to permit the withholding of agency records relating to management operations to the extent that the proper performance of necessary Service functions requires such withholding. (Attorney General, pp. 71-72). Thus, to the extent that taxpayer complaint files contain data relative to such operating rules and guidelines, the material is exempt from disclosure.

It is clear that many of the papers included in the taxpayer complaint files deal with confidential tax information within the scope of section 552(b)(3), that is, information specifically exempted from disclosure by statute. Thus, to the extent that these documents contain the type of information protected by sections 6103 and similar sections of the Code, and the penalty provisions of section 7213 of the Code and 18 U.S.C. 1905, they would be exempt from disclosure under section 552(b)(3).

Section 552(b)(4) authorizes the withholding of documents if they contain "commercial or financial information obtained from a person and privileged or confidential." This is information which would not customarily be made public by the person from whom it was obtained by the Government. Section 552(b)(4) may be read in the disjunctive, so as to cover not only privileged commercial or financial information, but all information which is customarily privileged or is appropriately given to an agency in confidence. (Attorney General, pp. 74-76) The taxpayer complaint letter, and certain documents prepared by the Service in reference to that letter, would seem to meet this latter criteria.

As to section 552(b)(5), it appears that many of the various documents prepared by Service officers or employees would be covered by this exemption for intra-agency memorandums which would not be available by law to a private party in litigation with the Service. Section 552(b)(5) is discussed in detail elsewhere in this memorandum, wherein is referenced the status of internal

communications under the Federal discovery rules together with the degree of security afforded. In brief, memoranda related to a taxpayer complaint are the type exempted by section 552(b) (5) since they are concerned generally with an analysis of a specific complaint with recommended Service action relative thereto.

Section 552(b) (6) is pertinent in that production of documents found in taxpayer complaint files may result in "a clearly unwarranted invasion of personal privacy." A balancing of the need for protection of an individual's right of privacy against the preservation of the public's right to Government information in the case of the instant documents, would seem, as a general rule, to contraindicate disclosure. The harm to the individual through disclosure is readily apparent. Section 552(b) (6) is intended to exclude from the disclosure requirements not only all personnel and medical files, but likewise all private or personal information contained in other files which would constitute a clearly unwarranted invasion of the privacy of an individual. The complaint files in question would contain this type of information.

#### JOINT INTERNAL AUDIT—INTERNAL SECURITY SPECIAL ASSIGNMENT FILES

Documents included within joint special assignment files are deemed to fall within the purview of one or more of the following exemptions: section 552(b) (3), (4), (5), (6), or (7).

Correspondence from a Regional Inspector would describe the basis for initiating a joint investigation, the results of any preliminary investigation previously accomplished, and the anticipated audit and investigative procedures to be followed. This correspondence would include in most instances the names of Service employees, taxpayers, and tax practitioners, as well as specific tax information relative to named individuals. Joint investigations would be directed toward matters such as bribery, extortion, embezzlement, and employee attempts to preclude audit of specific tax returns. The joint special assignment files would include periodic progress reports which frequently include confidential information having both tax and criminal aspects.

The files may also contain correspondence from the National Office to the field, acknowledging the initiation of a case, suggesting program changes, or commenting on the developments reflected in a particular progress report. The National Office file would probably contain memorandums relative to telephone conversations, conferences, visitations, or work performed. Interim and final reports are submitted, which customarily contain specific tax or investigative data of a confidential nature relative to specified individuals. Miscellaneous materials contained in special assignment files would include summaries of prosecutive action, as well as follow-up reports giving additional data in a particular case or related matter.

It is clear that many of the papers found in the joint special assignment files contain confidential tax information within the scope of section 552(b) (3), that is, information specifically exempted from disclosure by statute. Thus, to the extent that these documents contain the type of information protected by section 6103 and similar sections of the Code, and the penalty provisions of section 7213 of the Code and 18 U.S.C. 1905, they would be exempt from disclosure under section 552(b) (3).

Section 552(b) (4) authorizes the withholding of documents if they contain "commercial or financial information obtained from a person and privileged or confidential." This is information which would not customarily be made public by the person from whom it was obtained by the Government. Section 552(b) (4) may be read in the disjunctive, so as to cover not only privileged commercial or financial information, but all information which is customarily privileged or is appropriately given to an agency in confidence. (Attorney General, pp. 74-76.) Certain information contained in documents included in the joint assignment files would seem to fall within this latter criteria.

As to section 552(b) (5), it appears that many of the documents found within the files in question would be covered by this exemption for intra-agency memorandums which would not be available by law to a party other than an agency in litigation with the Service. Section 552(b) (5) is discussed in detail elsewhere in this memorandum, wherein is referenced the status of internal communications under the Federal discovery rules together with the degree of security afforded. In brief, memorandums found in the joint special assignment files are of the type exempted by section 552(b) (5) since they are concerned gen-

erally with an analysis of alleged illegal activity and recommended Service action relative thereto.

Section 552(b)(6) is pertinent in that disclosure of materials generated by a joint investigation may result in "a clearly unwarranted invasion of personal privacy." A balancing of the need for protection of an individual's right of privacy against the preservation of the public's right to Government information in the ease of the instant documents, would seem, as a general rule, to contraindicate disclosure. The harm to the individual through disclosure is readily apparent. In sum, it seems clear that section 552(b)(6) is intended to exclude from the disclosure requirements not only all personnel and medical files, but likewise all private or personal information contained in other files which, if disclosed to the public, would constitute an unwarranted invasion of the privacy of any person. Some documents could contain this type of information.

Perhaps the most substantial basis for precluding disclosure of materials contained within joint special assignment files, which are generally compiled as an outgrowth of alleged illegal activity, is section 552(b)(7), which protects "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency." It should be noted that the language in section 552(b)(7), "except to the extent available by law to a party other than an agency," is very different from the phrase, "which would not be available by law to a party other than an agency in litigation with the agency," used in section 552(b)(5). The effect of the exemption in section 552(b)(5) is to make available to the general public those internal documents from agency files which are routinely available to litigants, unless some other exemption bars disclosure. The effect of the language in section 552(b)(7), on the other hand, seems to be to confirm the availability to litigants of documents from investigatory files to the extent to which Congress and the courts have made them available to such litigants. For example, litigants who meet the burdens of the Jencks statute (18 U.S.C. 3500) may obtain prior statements given to an Inspector by a witness who is testifying in a pending case, but since such statements might contain information unfairly damaging to the litigant or other persons, the new law, like the Jencks statute, does not permit the statement to be made available to the public. In addition, the House report makes clear that litigants are not to obtain special benefits from this provision, stating that it "is not intended to give a private party indirectly any earlier or greater access to investigatory files than he would have directly in such litigation or proceedings." (H. Rept., p. 11) (Attorney General, pp. 82-83)

**TAXPAYER COMPLIANCE MEASUREMENT PROGRAM AND RELATED DOCUMENTS: PLANNING, PROGRAMMING, AND BUDGETING SYSTEM: RESEARCH STUDIES INITIATED TO GAIN NEW KNOWLEDGE REGARDING PROBLEMS OF TAX COMPLIANCE OR TAX ADMINISTRATION**

The Taxpayer Compliance Measurement Program: the Planning, Programming, and Budgeting System, and research studies have similar classifications for purposes of the Act, and, therefore, the discussion of these matters is combined. For ease of consideration the discussion is in terms of research studies, although the rationale is equally applicable to the Taxpayer Compliance Measurement Program, and to the Planning, Programming, and Budgeting System.

The Taxpayer Compliance Measurement Program, described at length in Document No. 5629 (11-65), is designed to assist management in the more effective administration of the tax laws, while the Planning, Programming, and Budgeting System generally relates to future plans, programs and budgeting considerations.

A research study may involve any facet of the operations of the Service and contain many different types of documents. Although this poses some problems in analyzing research studies in terms of the Act, certain general observations can be made. Most of the documents within a research study (to the extent not made available under section 7515 of the Code) would be encompassed by one or more of the following exemptions: 552(b)(2), (3), (4) or (5).

Research studies result through an inquiry or request from the Treasury Department, some segment of the Service, the Congress, a tax practitioners group, or some governmental agency. A study will usually involve the assemblage of data from various sources, including tax returns, internal use forms, the master file, interview or questionnaire surveys of IRS personnel or the public. Documents generated by research studies may include transcript sheets, IBM cards, tables, staff papers, visual presentation materials, and final reports.

If recommendations are approved, and this results in changes in internal procedures which affect the public, these changed procedures are announced by a revenue procedure, TIR, or revised regulation. In other instances the recommendations may deal with proposed legislation under consideration by the Treasury Department. A study may result in recommendations for changes in public use forms, *e.g.*, power of attorney or Form 1040Q. The public is advised after final decisions are made on form changes.

The legislative history of the Act indicates that the words "personnel rules and practices" in section 552(b) (2) include matters which are for the guidance of agency personnel only, such as internal rules and practices which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant Service function. The examples cited in the House report (p. 10) are "operating rules, guidelines, and manuals of procedure for Government investigators or examiners." It is noted, however, that the House report cautions that not all matters of internal management would be exempt, such as employee relations, working conditions, or routine administrative procedures. In sum, section 552(b) (2) is designed to permit the withholding of agency records relating to management operations to the extent that the proper performance of necessary Service functions requires such withholding. For example, disclosure of documents comprising a research study might prejudice the proper and efficient performance of the Service's future plans and programs. To the extent, therefore, that these documents contain data relative to operating rules and guidelines, such material is exempt from disclosure.

Certain documents within a research study may fall within the purview of section 552(b) (3), that is, information "specifically exempted from disclosure by statute." Thus, to the extent that a research study contains the type of information protected by section 6103 and similar sections of the Code, and the penalty provisions of section 7213 of the Code or 18 U.S.C. 1905, it would be exempt from disclosure under section 552(b) (3). This would occur, for example, if the research study identifies income tax return information with a particular taxpayer.

Section 552(b) (4) may, likewise, authorize the withholding of certain documents promulgated as a result of a research study if they contain "commercial or financial information obtained from a person and privileged or confidential." This is the type of information which would not customarily be made public by the person from whom it was obtained by the Government. (Attorney General, pp. 74-76) Where this type of commercial or financial information found in a research study may be identified with a person, this exemption is applicable.

Many documents in research studies fall within exemption 552(b) (5) for inter-agency or intra-agency memorandums which would not be available by law to a party other than an agency in litigation with the agency. Section 552(b) (5) is discussed in detail elsewhere in this memorandum, wherein is referenced the status of internal communications under the Federal discovery rules together with the degree of security afforded.

#### INACTIVE RECORDS

It is clear that the disclosure provisions of section 552 apply to all records of the Service, irrespective of whether at any given time they may be labeled active or inactive. (Attorney General, p. 53) There is no basis in the exemptions listed in section 552(b) for reaching a contrary conclusion.

The question has been raised as to whether section 552 affects existing record retention requirements. It is noted that there is nothing in the section which requires agencies to alter current record retention practices.

#### REVENUE RULINGS

Exemptions from disclosure are not an issue, since revenue rulings are already published in the Internal Revenue Bulletin. The only question is whether a revenue ruling should also be published in the Federal Register.

Revenue rulings are "interpretations" for the purposes of section 552. As such, revenue rulings must be published in the Federal Register if they are "interpretations of general applicability." See sec. 552(a) (1) (D). Otherwise, it is sufficient that revenue rulings are published in the Internal Revenue Bulletin. Sec. 552(a) (2).



It is clear from the legislative history of section 552(a) (1) that, unlike other provisions of law requiring disclosure, Congress was generally satisfied with the manner in which agencies had implemented the requirement of publication in the Federal Register. In fact, it is implied that perhaps agencies overcomplied by publishing too much in the Federal Register. The Senate report in discussing section 552(a) (1) states:

"This subsection has fewer changes from existing law than any other; primarily because there have been few complaints about omissions from the Federal Register of necessary official material. In fact, what complaints there have been have been more on the side of too much publication rather than too little." (S. Rept., p. 6)

It is concluded that section 552(a) (1) does not require any different standard for publication in the Federal Register of revenue rulings than has been used by the Service during the past twenty-odd years.

It has been the Service position during this period of time that the typical revenue ruling is not of general applicability, and hence not required to be published in the Federal Register, because it is directly responsive to, and limited by, the stated factual basis of the underlying letter ruling or technical advice request, much in the manner of a judicial decision. Thus, policy statement P-111 820-3 provides that "The conclusions expressed in Revenue Rulings will be directly responsive to and limited in scope by the pivotal facts stated in the Revenue Ruling. Also, the stated facts will be so technically oriented that field employees and taxpayers may clearly understand what was, and what was not, decided." See also Caplin, *Taxpayer Rulings Policy of the Internal Revenue Service: A Statement of Principles*, 20 N.Y.U. Inst. on Fed. Taxation 1, at pp. 31-32 (1962); Rogovin, *The Four R's: Regulations, Rulings, Reliance, and Retroactivity—A View from Within*, 43 Taxes 756 (1965). See also G.C.M. 25073 (In re: *Proposed Bureau Memorandum on procedure for compliance with the public information and rule making provisions of the Administrative Procedure Act*, A-409548), dated October 29, 1946. G.C.M. 25073 gives as an example of the type of revenue ruling which must be published in the Federal Register, Mimeograph 5968, C.B. 1946-1, 25, giving limited retroactive application to Treasury Decision 5488, relating to the *Clifford* case.

The relevant definition for determining whether revenue rulings are interpretations of "general applicability" is supplied by the Federal Register Act. Under this Act documents have general applicability:

"if they are relevant or applicable to the general public, the members of a class, or the persons of a locality, as distinguished from named individuals or organizations . . ." 1 CFR Part II (Rev. Jan., 1966) sec. 11.2.

Certainly a regulation has general applicability as that term is defined above. However, the typical revenue ruling is of limited applicability. The holding of the revenue ruling is limited and applicable only to the stated factual basis described therein. Such limitation necessarily prevents the revenue ruling from having "general applicability" as that term is defined above. Of course, if a revenue ruling were to promulgate a rule which is not limited by stated facts and circumstances it might possess "general applicability." In other words, such a "revenue ruling" could be laying down a rule of general applicability as broad and as encompassing as a regulation. If so, it would have to be published in the Federal Register. Of course, we have not reviewed all revenue rulings and do not know—nor do we have reason to suspect—that any such "rulings" have in fact been issued.

The statute itself provides that "those . . . interpretations which have been adopted by the agency and are not published in the Federal Register" come within section 552(a) (2) (B). This language of the statute is peculiarly tailored to the specifications of revenue rulings and this is made clear by the House report. At page 7 of the House report, it is made clear that an agency's "case law" is to be made available under section 552(a) (2) (B). Any doubt as to whether revenue rulings are a part of the Service's "case law" is laid to rest by language appearing on page 8 of the House report, as follows:

"The public has a need to know, for example, the details of an agency opinion or statement of policy on an income tax matter, but there is no need to identify the individuals involved in a tax matter if the identification has no bearing or effect on the general public."

While this memorandum was being prepared, the final version of the Attorney General's Memorandum was received. The Attorney General's view is believed to be in accord with the analysis set forth above. It is stated in the Memorandum, at p. 10, as follows:

"Thus, an agency is not required under subsection (a) to publish in the Federal Register the rules, policies and interpretations formulated and adopted in its published decisions. Instead, this 'case law' is to be 'made available under subsection (b).'"

LETTER RULINGS; DETERMINATION LETTERS; CLOSING AGREEMENTS; UNPUBLISHED GENERAL COUNSEL MEMORANDUMS; TECHNICAL ADVICE MEMORANDUMS (ISSUED BY BOTH CHIEF COUNSEL AND ASSISTANT COMMISSIONER (TECHNICAL))

Letter Rulings, Determination Letters, Closing Agreements, and the portion of Technical Advice Memorandums issued by the Assistant Commissioner (Technical) which is furnished to taxpayers, are exempt from disclosure under one or more of the following exemptions: section 552(b) (3), (4), (6), or (9). Unpublished General Counsel Memorandums, Technical Advice Memorandums issued by the Chief Counsel and the portion of Technical Advice Memorandums issued by the Assistant Commissioner (Technical) which is not furnished to taxpayers are exempt from disclosure under one or more of the aforementioned exemptions as well as under section 552(b) (5) and, in some instances, (b) (2). In the event that any of these records are held nonexempt, their status under section 552(a) (2) is also discussed herein.

Most of these records contain confidential tax information and thereby fall within the scope of section 552(b) (3) as information specifically exempted from disclosure by statute. Thus, to the extent that these records contain the type of information protected by section 6103 and similar sections of the Code and the penalty provisions of section 7213 of the Code and 18 U.S.C. 1905, they would be exempt from disclosure.

Section 552(b) (4) authorizes the withholding of the instant records, provided they contain "commercial or financial information" obtained from the taxpayer and "privileged or confidential." This is information which would not customarily be made public by the taxpayer from whom it was obtained by the Government. (H. Rept., p. 10; Attorney General, pp. 74-76)

In particular cases, section 552(b) (6) may be pertinent provided the disclosure of the records in question would result in "a clearly unwarranted invasion of personal privacy." For example, in support of a request for a ruling a taxpayer may disclose intimate details of his personal life. Such information is protected from disclosure by section 552(b) (6). Section 552(b) (6) is intended to exclude from the disclosure requirements not only personnel and medical files which are expressly mentioned, but likewise all private or personal information contained in other files which, if disclosed to the public, would invade the privacy of any individual. (H. Rept., p. 11; Attorney General, p. 80) Some of the records in question clearly contain this type of information.

Section 552(b) (9), relating to "geological and geophysical information and data, including maps, concerning wells," may also be applicable, particularly in cases involving the "natural resource" area. There is some indication that this exemption is unnecessary in view of the breadth of the exemption provided by section 552(b) (4), *supra*. (Attorney General, pp. 86-87) Nevertheless, when appropriate, the exemption should be invoked in conjunction with (b) (4).

In addition to the aforementioned exemptions which are applicable to all of the records classified herein, unpublished General Counsel Memorandums, Technical Advice Memorandums issued by the Chief Counsel, and the portion of Technical Advice Memorandums issued by the Assistant Commissioner (Technical) which is not furnished to taxpayers, may fall within the scope of exemption (b) (5) and, in some instances, (b) (2).

Section 552(b) (5) provides an exemption for intra-agency memorandums which would not be available by law to a party other than an agency in litigation with the Service. This exemption would apply in the case of Unpublished General Counsel Memorandums and the Technical Advice Memorandums (or portions thereof) discussed herein. Section 552(b) (5) is discussed in detail elsewhere in this memorandum, wherein is referenced the status of internal communications under the Federal discovery rules together with the degree of security afforded.

Section 552(b) (2) provides an exemption for matters which are related solely to the "internal personnel rules and practices of an agency." The legislative history states that this exemption includes matters which are for the guidance of agency personnel only, including internal rules and practices which cannot be disclosed to the public without prejudice to the proper and efficient performance of some appropriate Service function. The examples cited in the House report (p. 10) are "operating rules, guidelines, and manuals of procedure for Government investigators or examiners." Thus, to the extent that the records in question contain data relative to such operating rules and guidelines, the material is exempt from disclosure.

In the event that the aforementioned exemptions are held not applicable, consideration must be given as to whether the Service can properly contend that these records do not fall under section 552(a) (2). Letter Rulings, Determination Letters, Closing Agreements, unpublished General Counsel Memorandums and Technical Advice Memorandums issued by both Chief Counsel and Assistant Commissioner (Technical) are grouped for classification because the principal issue that they raise is whether they constitute the type of records issued by an agency on a specific set of facts which fall within the meaning of section 552(a) (2). If the answer is affirmative, section 552(a) (2) makes these records available for public inspection and copying, unless promptly published and copies offered for sale. Moreover, section 552(a) (2) matters that are adopted after July 4, 1967, the effective date of the law, must be indexed. In order to prevent a clearly unwarranted invasion of personal privacy, provision is made under section 552(a) (2) for deletion of identifying details when such records are made available.

It seems clear that of the type of records containing interpretations rendered by an agency on a specific set of facts, section 552(a) (2) is intended to make available to the public only those matters which have precedential significance. Support for this assertion is found in the House Report which states that "an agency may not be required to make available for inspection and copying any advisory interpretation on a specific set of facts which is requested by and addressed to a particular person, provided that such interpretation is not cited or relied upon by any officer or employee of the agency as a *precedent* in the disposition of other cases." (Emphasis added.) (H. Rept., p. 7.) Furthermore, the House Report indicates that the indexing requirement relates only to documents having precedential significance. (H. Rept., p. 8.) Additional support for this position is reflected by the Attorney General at pages 34, 42, 47, and 49.

For many years the Service's published position has been that:

"No unpublished ruling or decision will be cited or relied upon by any officer of the Internal Revenue Service as a precedent in the disposition of other cases." (Statement of Procedural Rules, 26 CFR 601.702(b) (5) )

As long as the Service is satisfied that, pursuant to the above-quoted policy, it publishes all its rulings and decisions which it uses as precedent in the disposition of other cases, there is no need to make available for public inspection and copying under section 552(a) (2) any of the aforementioned records.

#### REVENUE PROCEDURES

Exemptions from disclosure are not an issue, since revenue procedures are already published in the Internal Revenue Bulletin. The only question is whether a revenue procedure should also be published in the Federal Register.

The Service's revenue procedure program was announced to the public by Rev. Proc. 55-1, C.B. 1955-2, 897. The policy of the program was stated to be:

"to publish for public information all statements of practice and procedure issued primarily for internal use, and, hence, appearing in internal management documents, which affect rights or duties of taxpayers or other members of the public under the Internal Revenue Code and related statutes . . ." Sec. 3, Rev. Proc. 55-1, *supra*.

This statement of policy corresponds in large measure to what are termed "instructions to staff that affect any member of the public" in section 552(a) (2) (C).

The Attorney General has characterized section 552(a) (2) (C) in this fashion: "Standards established in agency staff manuals and similar instructions to staff often may be, for all practical purposes, as determinative of matters within

the agency's responsibility as other [section 552(a)] materials which have the force and effect of law. In accordance with the basic purpose of [section 552(a) (2)], 'to afford the private citizen the essential information to enable him to deal effectively and knowledgeably with the Federal agencies' (S. Rept., 88th Cong., 12), [section 552(a) (2) (C)] requires the public availability of 'administrative' staff manuals and instructions to staff if they 'affect any member of the public.' (Attorney General, p. 35)

An example of the type of material the Attorney General refers to is furnished by Rev. Proc. 62-21, C.B. 1962-2, 418, relating to depreciation guidelines. This revenue procedure provides guidelines for the staff in auditing cases involving depreciation issues. The guidelines are "administrative" guidelines because they are the type which the Service desires the public to know. As such, Rev. Proc. 62-21, *supra*, and similar revenue procedures containing administrative guidelines need to be made available only under section 552(a) (2). Such revenue procedures need not be published in the Federal Register.

Additional support for the position that most revenue procedures need be published only in the Internal Revenue Bulletin may be found in the legislative history of section 552(a) (1). This legislative history shows that Congress was generally satisfied with the manner in which agencies had implemented the requirement of publication in the Federal Register. In fact, it is implied that perhaps agencies overcomplicated by publishing too much in the Federal Register. The Senate report in discussing section 552(a) (1) states:

"This subsection has fewer changes from existing law than any other: primarily because there have been few complaints about omissions from the Federal Register of necessary official material. In fact, what complaints there have been have been more on the side of too much publication rather than too little." (S. Rept., p. 6)

Consequently, it is concluded that most matter selected in accordance with the policy stated in Rev. Proc. 55-1, quoted *supra*, for publication as a revenue procedure is not required to be published in the Federal Register.

An exception to this conclusion would occur in the case of a revenue procedure which contains statements of the general course and method by which the Service's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available (see section 552(a) (1) (B)). An example of a revenue procedure of this type is Rev. Proc. 67-1, I.R.B. 1967-1, 5 which relates to the general procedures of the Service for issuing rulings and determination letters to taxpayers and for entering into closing agreements as to specific issues, together with an explanation of the rights and responsibilities of taxpayers under these procedures. This revenue procedure contains the type of material which should be published in the Federal Register either in the form of a revenue procedure or in some other form such as the Statement of Procedural Rules (26 CFR 601). We understand that the Statement of Procedural Rules will be amended to the extent required by Rev. Proc. 67-1, *supra*.

#### TECHNICAL FIELD CONFERENCE REPORTS

Technical Field Conference Reports primarily fall within the scope of section 552(b) (5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." There has been provided elsewhere in this memorandum a detailed discussion of the section 552(b) (5) exemption and the status of internal communications under the Federal discovery rules together with the degree of security afforded.

Technical Field Conference Reports are published in pamphlet form. Conferences are held with respect to income tax matters, exempt organizations, excise taxes, pension trust matters and estate and gift taxes. The published report reflects what transpired at the conferences. That Technical Field Conference Reports possess the characteristics of the type of internal communications protected by section 552(b) (5) is shown from the notice appearing in the Reports, of which the following is typical:

"In an effort to stimulate a free and frank exchange in all of the technical discussions which took place at the conferences, the National Office representatives deliberately discussed tentative thinking on most of the difficult and still unresolved issues pending before the Service. Therefore, since final decisions with respect to these issues have not been made, it is very important that this report

be read for what it is; that is, a report to the Assistant Commissioner (Technical) on the problems and issues which were developed and discussed at the meetings. None of the thinking of the National Office representatives should be taken to be firm statements of position of the Service or serve as precedents for reaching conclusions in any case." (See, *e.g.*, notice to 1965 Technical Field Conferences on income tax matters.)

In addition to the exemption provided by section 552(b) (5), other exemptions may be applicable to portions of the subject Reports. Thus, section 552(b) (2), which exempts matters relating to an agency's internal personnel rules and practices, may apply to protect matters concerning operating rules or guidelines for agency personnel. These are the internal rules and practices which cannot be disclosed to the public without prejudice to the proper and efficient performance of some appropriate Service function. (H. Rept., p. 10) Portions of Reports which can be related to particular taxpayers may be protected from disclosure by section 552(b) (3), if protection is extended by some other statute. Thus, to the extent that a Report contains the type of information protected by section 6103 and similar sections of the Code, and the penalty provisions of section 7213 of the Code or 18 U.S.C. 1905, it would be exempt from disclosure under section 552(b) (3). Section 552(b) (4) affords protection to commercial or financial information obtained from any person and privileged or confidential and section 552(b) (6) to information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

#### TECHNICAL COORDINATION REPORTS

Technical Coordination Reports fall within the scope of section 552(b) (5) of the Act, which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

There has been provided elsewhere in this memorandum a detailed discussion of the section 552(b) (5) exemption and the status of internal communications under the Federal discovery rules together with the degree of security afforded. That the Technical Coordination Report (Form 3558) possesses the characteristics of this type of communication follows from its purpose, *i.e.*, to call to the attention of National Office officials situations which in the opinion of the originator of the Report require corrective action. For example, an Internal Revenue Agent may discover what he thinks is a situation giving rise to tax abuse. He would report on this situation in detail using Form 3558 and, as a part of his report, include recommendations for corrective action. The agent's report and recommendations are subject to many levels of review and do not represent the position of the Service.

In addition, depending upon the content of a particular document, other exemptions may be applicable. For example, a Technical Coordination Report may comment on the inadequacy of a Service operating rule or guideline, the disclosure of which would impair the proper and efficient performance of some appropriate agency function. Such information may fall within the exemption set forth in section 552(b) (2) for an agency's internal personnel rules and practices. (H. Rept., p. 10) Also, the subject document may contain matter exempted from disclosure by statute (sec. 552(b) (3)); commercial, financial or other confidential matter exempted by section 552(b) (4); or matter the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and hence exempted by section 552(b) (6).

#### POST REVIEW MEMORANDUMS

Many Post Review Memorandums have enough of the characteristics of intra-agency memorandums to support the conclusion that they are exempt from disclosure under section 552(b) (5) as "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." These Post Review Memorandums are a medium by which the Service carries on a "frank discussion of legal or policy matters" (S. Rept., p. 9) on such matters as previously issued determination letters, the merits of settlements in particular cases and many other matters.

There has been provided elsewhere in this memorandum a detailed discussion of the section 552(b) (5) exemption and the status of internal communications under the Federal discovery rules together with the degree of security afforded.

Other exemptions may be applicable depending upon the identity of the requester. A Post Review Memorandum will generally contain data peculiar to the specific taxpayer. When this is the case, and when the requester is someone other than the taxpayer, production of the memorandum may be denied on the authority of the following exemptions: section 552(b) (3), disclosure prohibited by statute; section 552(b) (4), by reason of commercial, financial, or other privileged or confidential information being contained therein; or section 552(b) (6), if personal privacy would be invaded. In addition, the exemption provided by section 552(b) (2) for internal personnel rules and practices may be invoked in cases where the memorandum contains material which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant agency function, such as operating rules or guidelines for Governmental investigators or examiners. (H. Rept., p. 10; Attorney General, pp. 71-72)

In cases where the requester is the taxpayer who is the subject of the memorandum, the range of applicable exemptions is narrower. In these cases, the provisions of sections 552(b) (2) and 552(b) (5) may provide the only applicable exemptions.

#### TECHNICAL SUBJECT DIRECTORY

The Technical Subject Directory is not exempt and must be made available upon specific request under section 552(a) (3).

Essentially the directory is a listing of the various tax areas by division and branch with a further breakdown arranged by specific topics for all areas coming within the responsibility of each division and branch. Next to each subject matter designation is the name and phone extension of persons who specialize in those areas. In practical operation, the directory serves as a useful means of ascertaining the principal specialist who may be contacted on a particular subject.

The exemptions in sections 552(b) (2) and 552(b) (5) were considered and rejected. It would be difficult to conclude that the directory relates to "operating rules, guidelines, and manuals of procedure for Government investigators or examiners" as those terms are used under the House report explanation of the exemption in section 552(b) (2) for internal personnel rules and practices of an agency. Moreover, the House report emphasized that the exemption would not cover all matters of internal management such as "routine administrative procedures". (H. Rept., p. 10) Furthermore, the Attorney General in discussing this exemption stated that it is designed to cover "internal rules and practices which cannot be disclosed to the public without *substantial* prejudice to the effective performance of a *significant* agency function." (Attorney General, p. 71) (Emphasis added)

The exemption in section 552(b) (5) deals with inter-agency and intra-agency memorandums. This does not appear to be an appropriate exemption for the directory since the exemption is directed at internal advisory memorandums dealing with an exchange of ideas and opinions, as opposed to mere factual matters. Reference is made to the detailed discussion of the section 552(b) (5) exemption in this memorandum.

It is recognized that public availability of the directory might generate calls to the individual specialist and hamper the processing of work. It is felt, however, that the general spirit of the Act outweighs the possible inconvenience that might result.

Furthermore, withholding the directory from disclosure might result in adverse criticism of the Service. Since it lists the phone numbers of specialists in each of the designated areas, it might be considered by some as merely a telephone directory. In this respect, the House report specifically criticized the practice of one agency which withheld telephone directories under the guise of internal management. (H. Rept., p. 5, citing H. Rept. 1257, 87th Cong., pp. 77-82.)

#### TAX BRIEFS

In most instances, Tax Briefs are not exempt under the Act and must be made available upon specific request as an identifiable agency record under section 552(a) (3). However, it is observed that some issues of Tax Briefs contain references to the Internal Revenue Manual, parts of which may be classified as exempt under the Act. In such case, the factors set forth below should be used in deciding whether the Tax Brief must be made available.

Tax Briefs contain succinct digests of selected court decisions, published rulings and other important technical developments such as announcements of new regulations and public laws. As noted above, some issues may make reference to portions of the Internal Revenue Manual, *e.g.*, on new or changed examining techniques growing out of the technical developments, or other audit matters of current importance. According to I.R. Mimeograph No. 57-110, October 30, 1957, which announced the establishment of the program, Tax Briefs is "intended to serve as a simple means of enabling Internal Revenue personnel engaged in technical work to keep abreast of technical developments with the least expenditure of time and effort. It is designed to permit personnel to readily identify those areas which affect their particular areas of work and to make it less necessary for employees to read, for this specific purpose, commercial letters and similar publications." The Mimeograph emphasizes that the Briefs are not to be used as a substitute for research nor used or cited as authority.

With regard to those Tax Briefs which only contain digests of published material, no exemption is found to keep them from disclosure upon specific request under section 552(a)(3), since they contain nothing more than summaries of information already made public. With respect to Tax Briefs which contain references to exempt Manual material such as examining techniques and similar matters, the mere reference to the existence of such material in an issue of Tax Briefs would not cause that issue to be classified as exempt. Even if the content of the exempt materials is discussed in an issue of Tax Briefs, the entire issue should not be classified as exempt unless the exempt material is so intermingled with the non-exempt material as to make "masking" of the exempt material impracticable. Such an approach is in accord with the spirit of the Act and produces a common sense result.

If a rare instance occurs in which exempt and non-exempt material is so intermingled as to preclude "masking", the entire issue may be classified as exempt under section 552(b)(2) as a matter relating to "internal personnel rules and practices." This statutory language has been interpreted by the House report as exempting operating rules, procedures and guidelines for Government investigators and examiners. (H. Rept., p. 10)

In addition to the above discussion, it may be noted that an argument exists that Tax Briefs do not constitute "records" within the contemplation of section 552. However, since there would appear to be no harm in making Tax Briefs available under section 552(a)(3) (except as they may be protected by section 552(b)(2)), it is considered inadvisable to advance this argument in respect of Tax Briefs at this time. If compliance with requests becomes burdensome, the Service may then wish to argue that Tax Briefs are not "records."

The argument that Tax Briefs may not be "records" for purposes of section 552 stems from the definition of "record" suggested by the Attorney General and appearing at pp. 52-53 of his Memorandum. Library material made solely for reference purposes is not a "record" within this definition. The fact that Tax Briefs contain succinct digests of material already made public tends to impart an aspect of "library material" to Tax Briefs.

#### EARNINGS AND PROFITS GUIDE

The Earnings and Profits Guide is exempt from disclosure under section 552(b)(5) as an inter-agency or intra-agency memorandum or letter which would not be available by law to a private party in litigation with the agency.

In essence, the Guide represents an unapproved memorandum, prepared by three tax law specialists in 1959, for the computation of earnings and profits of a corporation available for the payment of dividends. It analyzes, generally, what the specialists thought were the problems that arise in connection with the determination of earnings and profits available for the payment of dividends to shareholders and discusses the methods used by the Service in making such computations. The Guide has not been updated or supplemented since April, 1959. It has received no official sanction and merely represents the views of the three tax law specialists who wrote it. More important, because of court decisions and changes in the Service's position in the earnings and profits area, it does not represent an accurate presentation of the current views of the Service.

Since the Guide represents a memorandum or special study report by subordinate employees, it would clearly constitute an intra-agency memorandum. However, in order to come within the section 552(b)(5) exemption, it must be a

memorandum of the type "which would not be available by law to a party other than an agency in litigation with the agency." Since the document contains the deliberations, advisory opinions, and views of subordinate personnel with regard to the Service's treatment of earnings and profits, it would be privileged from discovery and not *routinely* available to a private litigant. Accordingly, the section 552(b)(5) exemption would apply to the Guide. Reference is here made to the portion of this memorandum relating to the section 552(b)(5) exemption for a detailed discussion of the status of internal communications under the Federal discovery rules together with the degree of security afforded.

#### ENGINEERING CITATOR

The Engineering Citator is not exempt and must be made available upon specific request as an identifiable agency record under section 552(a)(3).

Basically, the Citator is a compilation of annotations, headnotes, and synopses of published tax law precedents and is designed for use as a basic reference source on the tax treatment of engineering issues. It is concluded, therefore, that no exemption would operate to keep the Engineering Citator from being made available upon specific request.

Particular consideration was given to the possibility that the section 552(b)(5) exemption might be applicable to this document. However, this exemption relates to documents which contain the advisory opinions and deliberations of agency personnel and, therefore, would not normally be applicable to a compilation of already published positions and decisions.

In addition to the above discussion, it may be noted that an argument exists that the Engineering Citator does not constitute a record within the contemplation of section 552. However, since there would appear to be no harm in making the Citator available under section 552(a)(3), it is considered inadvisable to advance this argument in respect of the Citator at this time. If compliance with requests becomes burdensome, the Service may then wish to argue that the Citator is not a record.

The argument that the Citator is not a record for purposes of section 552 stems from the definition of "record" suggested by the Attorney General and appearing at pp. 52-53 of his Memorandum. Library material made solely for reference purposes is not a "record" within this definition. The fact that the Citator contains succinct digests of material already made public tends to impart an aspect of "library material" to it.

#### ENGINEERS' COORDINATION DIGEST

The Engineers' Coordination Digest falls within the purview of section 552(b)(2) and (5) and is, therefore, protected from disclosure.

The Digest covers professional and technical developments, and audit problems affecting engineering work. Essentially, the Digest deals with engineering problems disclosed by the National Office post-audit program which is restricted to representative sample problems selected at random from agreed income tax cases closed in the field. The basic objectives of this review are to heighten uniformity in the treatment of engineering issues and to provide early recognition of new and existing tax problems of national scope. Significant instructional and informational material which is developed from the post-audit review program is communicated to the field through the Engineers' Coordination Digest.

The Digest may also discuss problems in relation to court decisions and published rulings of the Service. Field offices are encouraged to submit engineering topics for discussion in Coordination Digests. Although the post-audit program involves a review of a copy of the Engineer Revenue Agent's report and copies of his work papers and relevant schedules, the discussion of the problem areas in the Digest never identifies a particular taxpayer or his return. The Digest is limited to a general discussion of the engineering features of a case and is not to be cited as authority nor used as a substitute for research. Accordingly, the section 552(b)(5) exemption, relating to intra-agency memorandums, would apply to the Digest. Reference is here made to the portion of this memorandum relating to the section 552(b)(5) exemption for a detailed discussion of the status of internal communications under the Federal discovery rules together with the degree of security afforded.

The exemption in section 552(b)(2) relates to internal personnel rules and practices of an agency. The legislative history of this exemption makes it clear



that it is intended to protect from disclosure operating rules, guidelines, and manuals of procedure for Government investigators and examiners, which cannot be disclosed to the public without substantial prejudice to the effective performance of the agency functions. (Attorney General, p. 71) These terms include criteria or guidelines in auditing or inspection procedures, or in the selection or handling of cases, such as operational tactics, allowable tolerances, or criteria for defense, prosecution, or settlement of cases. (Cf. H. Rept., pp. 7-8) Tested under these standards, material in the Engineers' Coordination Digest would appear to relate to this exemption.

#### TRANSMITTAL MEMORANDUM FOR REGULATIONS; TECHNICAL MEMORANDUM FOR REGULATIONS

Transmittal and technical memorandums for regulations fall within the purview of section 552(b)(5) as "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

Transmittal and technical memorandums record the opinions and deliberations of the persons who drafted the regulations with regard to such matters as the strengths and weaknesses of approaches taken in the regulations and possible errors or loopholes in the statutes to which the regulations relate. It is concluded that they are clearly inter-agency or intra-agency memorandums which are privileged from discovery and are thus not *routinely* disclosed to a private party through the discovery process. Accordingly, the section 552(b)(5) exemption may be raised with respect to transmittal and technical memorandums.

Reference is here made to the portion of this memorandum relating to exemption 552(b)(5) for a detailed discussion of the status of internal communications under the Federal discovery rules together with the degree of security afforded.

It should be noted that in particular cases several other exemptions, such as section 552(b)(3), (4), and (9), may be applicable to transmittal and technical memorandums. This would occur, for example, where the memorandums contain tax information which is protected from disclosure by section 6103 and similar sections of the Code (section 552(b)(3)); information volunteered by interested persons under a pledge of confidentiality (section 552(b)(4)); and geological and geophysical information and data concerning oil and gas wells (section 552(b)(9)).

#### COMMENTS FROM THE PUBLIC ON PROPOSED REGULATIONS

Written comments from the public on proposed regulations fall within the purview of section 552(b)(4) as matters that are "trade secrets and commercial or financial information obtained from any person and privileged or confidential."

The legislative history of section 552(b)(4) indicates an intention to protect documents or information which the Government has, in good faith, obligated itself not to disclose, as well as documents or information given to an agency in confidence. (H. Rept., p. 10)

The Service has a long-standing practice of treating comments from interested persons on proposed regulations as confidential and refusing to disclose either the comments or the names of the persons making the comments. Section 601.601 (b) of the Statement of Procedural Rules announces this practice to the public. This practice is intended to encourage the submission of useful practical information by persons interested in the proposed regulations and which the Service would, in most instances, be unable to obtain from other sources.

It is concluded that the Service has in good faith and for good reason obligated itself not to disclose comments or the names of the persons making the comments. Accordingly, the comments and the names are exempt under section 552(b)(4) from the disclosure provisions of section 552(a).

It should also be noted that section 601.601(b) expressly provides that the name of any person requesting a public hearing and the issues which may be discussed at the hearing are not confidential. Accordingly, these matters would not be exempt under section 552(b)(4).

From time to time, consideration has been given to changing the Service's practice with respect to the confidentiality of comments. Since there have been many different suggestions as to the exact nature and extent of the proposed change, no attempt is made to discuss the application of the Act should such a change occur. However, it is concluded that the section 552(b)(4) exemption must be relied on to prevent disclosure with respect to comments received as long as the Service's outstanding position continues.

## LEGISLATIVE FILES

The documents in the legislative files of the Service primarily fall within the exemption of section 552(b) (5) as "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

Documents in the legislative files often take the form of memorandums prepared in the Service, in Treasury, or in another agency, concerning the merits or ramifications of potential legislation. Frequently, the documents are actual legislative recommendations. These recommendations are records of advisory opinions and deliberations of Service and Treasury personnel containing such matters as strengths and weaknesses of existing statutes, the need for statutory changes, and the form which such changes should take. The file may contain the preliminary drafts of potential legislation and committee reports. The preliminary drafts may have been substantially changed in the final version of the statute or committee reports but still have value for record purposes and in tracing the development of the final version.

It is concluded that all of these documents are inter-agency or intra-agency communications which are subject to a conditional privilege from discovery and are thus not *routinely* disclosed to a private party through the discovery process. Accordingly, the section 552(b) (5) exemption may be raised with respect to them. Reference is here made to the portion of this memorandum relating to exemption 552(b) (5) for a detailed discussion of the status of internal communications under the Federal discovery rules together with the degree of security afforded.

## ACTIONS ON DECISIONS

All Actions on Decision are exempt from disclosure under section 552(b) (5) as intra-agency memorandums which would not be available by law to a party other than an agency in litigation with the agency. In addition, some Actions on Decision would also be exempt under section 552(b) (2) as matters relating solely to the internal personnel rules and practices of an agency.

In essence, an Action on Decision is a document having a two-fold purpose: (1) to determine whether the Service will recommend appeal of an issue decided, in whole or in part, adversely to it by the Tax Court or United States District Court, or request certiorari in cases decided by the Court of Claims or a United States Court of Appeals, and (2) to determine whether the Commissioner will accept the issue involved in the disposition of other cases. See Chief Counsel's Office Tax Court Division Manual ¶ 1601.

In Tax Court cases, acceptance or nonacceptance of a decision is signified by the terms "acquiescence" and "nonacquiescence," which determination is announced in the Internal Revenue Bulletin with respect to the adverse published opinions of the Tax Court. The Service's position as to adversely decided issues in memorandum opinions of the Tax Court is not officially published.

All Actions on Decision should fall within section 552(b) (5), which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The Senate report interprets this exemption as including the working papers of an agency attorney and documents which would come within the attorney-client privilege as applied to private parties. (S. Rept., p. 2) Thus, there appears to be Congressional recognition of the "attorney work-product" privilege through exemption (b) (5). Section 552(b) (5) is discussed in detail elsewhere in this memorandum, wherein is referenced the status of internal communications under the Federal discovery rules, together with the degree of security afforded.

In brief, Actions on Decision fall within the scope of the section 552(b) (5) exemption because of their characteristic as intra-agency memorandums containing advisory opinions, deliberations, mental processes, or similar matter. In essence, they contain the views of an attorney relative to the strengths and weaknesses of a case, with the Service position stated thereon. As above noted, the Service announces its position in a case in the form of an "acquiescence" or "nonacquiescence". However, the recommendations, deliberations, contributive influences and reasons comprising the basis for that decision may properly be kept confidential under the purview of section 552(b) (5).

In certain instances an Action on Decision may recommend a change in Service policy or procedure. Where this occurs, the final decision of the Service would

be reflected in a revenue rule, revenue procedure or through revision of a regulation. Therefore, until the revenue rule or Service position is finally decided upon, the Action on Decision is merely a recommendation in the formulation of precedential Service position. As such, it would be within the scope of section 552(b)(5).

In addition, certain Actions on Decision may fall within the scope of section 552(b)(2), which exempts from disclosure matters that are "related solely to the internal personnel rules and practices of an agency." The House report states that section 552(b)(2) would exempt from public disclosure such matters as "operating rules, guidelines, and manuals of procedure for Government investigators or examiners." (H. Rept., p. 10) These terms are construed to include criteria or guidelines in the selection or handling of cases, such as operational tactics, or criteria for the defense, prosecution, or settlement of cases. (Cf. H. Rept., pp. 7-8)

#### RECORDS UNDER THE RIRA SYSTEM

Because the RIRA system encompasses records prepared by lawyers in connection with the preparation for trial, it may be argued that the entire RIRA system is exempt under section 552(b)(5) as the "work product" of attorneys. In other words, the RIRA system represents the work product of the Chief Counsel's Office for handling its total litigation load. Even if a uniform exempt classification cannot be assigned to the entire system, it is clear that certain records, such as the Prime Issue List of cases and the Abstracts, may be specifically classified as exempt under section 552(b)(2) or 552(b)(5).

The records in the RIRA system are maintained on microfilm, magnetic tapes, or print-outs from magnetic tapes. The basis of the system is the Uniform Issue List (section 1275 of the Internal Revenue Manual which has been classified as not exempt). This list consists of legal descriptors keyed directly to the Internal Revenue Code section involved. Each attorney handling a pending file utilizes a multipurpose reporting form and the descriptors in the issue list. The reporting forms are then key punched and processed into the various statistical formats which comprise the RIRA system. For the most part the records generated from the magnetic tapes contain about the same information. However, each record is in a different format and some have more coded information depending on use. The very nature of the system is that, as a result of programming, the magnetic tapes can generate print-outs in almost any form, categorizing the information to fit the particular need.

The following are the principal records presently used in the RIRA system:

1. Pending index;
2. History file;
3. Pending case index by office and attorney;
4. Pending and closed register by office and attorney;
5. Master file;
6. Prime issue list of cases;
7. Abstracts.

It is arguable that the entire RIRA system falls under section 552(b)(5) which exempts from disclosure inter-agency and intra-agency memorandums which would not be available to a party other than an agency in litigation with the agency. The Senate report interprets this exemption as including, *inter alia*, the working papers of an agency attorney and documents which would come within the attorney-client privilege as applied to private parties. (S. Rept., p. 2) Thus, there is Congressional recognition of the "attorney-work-product" privilege through exemption (b)(5).

An attorney's work product has been defined as the "impressions, observations and opinions which he has recorded and transferred to his file." *Scouters v. Fred W. Albrecht Grocery Co.*, 15 F.R.D. 55 (N.D. Ohio 1953). This work product of a lawyer is protected, not because of strict privilege, but because to hold otherwise would interfere seriously with the vital function performed by counsel. *Manning v. State Farm Mutual Automobile Insurance Co.*, 235 F. Supp. 615 (D.C.N.C., 1964). Any problem concerning the discovery of an attorney's work product must inevitably start with the case of *Hickman v. Taylor*, 329 U.S. 495 (1947). In that case, the plaintiff sought to obtain copies of statements obtained from witnesses by an attorney representing the defendant. The Supreme Court, in sustaining objections to the interrogatories stated:

"Here is simply an attempt without purported necessity or justification, to secure written statements, private memoranda and personal recollections prepared

or formed by an adverse party's counsel in the course of his legal duties. As such, it falls outside the arena of discovery and contravenes the public policy underlying the orderly prosecution and defense of legal claims. Not even the most liberal of discovery theories can justify unwarranted inquiries into the files and mental impressions of an attorney. . . . The general policy against invading the privacy of an attorney's course of preparation is so well recognized and so essential to an orderly working of our system of legal procedure that a burden rests on the one who would invade that privacy to establish adequate reasons to justify production. . . ." 329 U.S. at 510-12.

As a general rule, it may be said that the work product of an attorney is not normally a proper subject of discovery. *Ayers v. Pastime Amusement Co.*, 240 F. Supp. 811 (D.C.S.C. 1965); *Johnson v. Chicago, Rock Island and Pacific Ry. Co.*, 228 F. Supp. 160 (D.C. Minn. 1964); *Radiant Burners, Inc. v. American Gas Ass'n.*, 207 F. Supp. 771 and 209 F. Supp. 321 (D.C. Ill. 1962); *Smigiel v. Compagnie De Transp. Oceaniques*, 183 F. Supp. 518 (D.C. Pa. 1960). However, even if the courts find that work-product material is involved, they may allow discovery upon a showing of sufficient cause or good cause. *Redfern v. American President Lines, Ltd.*, 228 F. Supp. 227 (D.C. Calif. 1963); *Diamond v. Mohawk Rubber Co.*, 33 F.R.D. 264 (Colo. 1963); *Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.*, 211 F. Supp. 736 (D.C. Ill. 1962).

In applying the work-product standard of the *Hickman* case, it appears that the courts have differed in their views of the underlying rationale for the work-product doctrine and, perhaps for this reason have differed in defining its scope. One school of thought, relying upon the emphasis in the *Hickman* opinion on the importance of preserving the privacy of a lawyer's "mental processes", has concluded that the doctrine is intended largely to immunize trial strategy from discovery. *Guilford National Bank v. Southern Ry.*, 24 F.R.D. 493, 499 (M.D. N.C. 1960). Other courts, however, have taken a broader view and also protected from discovery statements of witnesses to an accident obtained by others for use of counsel, subject matter in which a lawyer's mental processes obviously played little part. *Snyder v. U.S.*, 20 F.R.D. 7 (E.D. N.Y. 1956). While it would appear from the above cases that an attorney's mental impressions, conclusions, or legal theories are generally privileged, if relevant factual material is involved and good cause has been shown to a degree sufficient to require production of non-privileged materials and there is no attempt to secure the mental impressions of the attorney, discovery has generally been allowed. *U.S. v. Gates*, 35 F.R.D. 524 (Colo. 1964); *Burke v. United States*, 32 F.R.D. 213 (E.D. N.Y. 1963); *Diamond v. Mohawk Rubber Co.*, *supra*; *E.I. Dupont De Nemours & Co. v. Phillips Petroleum Co.*, 24 F.R.D. 416 (Del. 1959).

While there are no cases specifically involving matter contained in RIRA, there are cases pertaining to legal memorandums from corporate counsel to trial counsel or agency counsel to trial counsel in the Department of Justice. Such cases have generally held that the memorandums are attorney's work product and hence not discoverable absent a showing of very good cause. In the case of *United States v. American Optical Co.*, F.R.D. 233 (E.D. Wisc. 1965), the defendant moved for the production of certain documents from the plaintiff, United States. The documents included memorandums prepared by Government attorneys to their superiors on the theory of the case, together with the responses of the superiors and memorandums prepared on conferences with witnesses and persons in the optical industry. All were held to be covered by the work-product concept and, accordingly, were not discoverable absent a showing of good cause. A valid argument may be made that issue classification of cases pending in litigation is work product to the same extent as memorandums detailing the legal theories of the case.

In *Vilastor-Kent Theatre Corp. v. Brandt*, 19 F.R.D. 522 (S.D. N.Y. 1956), there was a motion to produce a memorandum written prior to litigation, but with the apprehension of litigation. The memorandum was forwarded by corporate counsel to individual co-counsel. The memorandum was held to be work product which would be produced only on meeting a "stringent standard of good cause" (p. 525). The court pointed out that the movant has the burden of showing that production of the document is essential to the preparation of his case. See also 4 Moore's Federal Practice 1381, which construes *Hickman v. Taylor*, *supra* to mean that attorney's work product is discoverable only when the case is "a rare one having exceptional features which make the disclosure necessary in the interests of justice."

In view of the foregoing, it is concluded that with respect to specific cases RIRA represents work product of the attorney assigned to the case. However, the Chief Counsel's Office stands on a somewhat different footing than an individual attorney with respect to whom the usual concept of work product has been applied over the years. The function of the Chief Counsel's Office is, of course, to handle or be involved in all of the Commissioner's tax litigation. As such, the work-product doctrine can and should be extended beyond narrow limitations of individual cases to the totality of the litigation. The determination of the issue in the case and the determination of whether the issue is similar to issues in other pending cases involves legal analysis and mental processes of attorneys in the Chief Counsel's Office (including regional counsel) which clearly comes within the work-product concept.

With regard to particular records in the RIRA system, even aside from the attorney work-product privilege, it appears clear that the Abstract record falls within exemption 552(b)(5). Since the Abstract record is, in effect, a memorandum by the attorney handling the case summarizing the facts and often pending strategy or defense information, including a statement of the strengths or weaknesses of the case, it would clearly constitute an intra-agency memorandum. However, in order to fall within the section 552(b)(5) exemption it must be a memorandum of the type which would not be available by law to a private party in litigation with the agency. Since the Abstracts contain the deliberations, advisory opinions, and views of subordinate personnel with regard to the handling of cases, even without regard to the attorney work-product doctrine, they would be privileged from disclosure and not routinely available to a private litigant. Accordingly, the section 552(b)(5) exemption would apply to Abstracts. Reference is made to the portion of this memorandum relating to exemption 552(b)(5) for a detailed discussion of the status of internal communications under the Federal discovery rules and the degree of security afforded.

It seems clear the Prime Issue List falls within section 552(b)(2) which exempts from disclosure matters relating solely to the internal personnel rules and practices of an agency. The legislative history of this exemption states that it is intended to protect from disclosure operating rules, guidelines, and manuals of procedure for government investigators and examiners. (H. Rept., p. 10). This exemption includes guidelines in the selection or handling of cases, such as operational tactics, or criteria for defense, prosecution, or settlement of cases (*Cf.* H. Rept., pp. 7-8). Tested under these standards, it would appear that the Prime Issue List would fall squarely within the scope of handling of cases in litigation and several other of the aforementioned descriptive terms.

With respect to the remaining items listed above, much of the information contained in these records is already public information. For example, the Pending Index is a computer print-out of the entire file of cases in issue sequence, together with the name of the taxpayer, docket number, status, coded classification of the case (standard or prime), coded classification of the particular issue, the date of origin, date of last change, the attorney (by code number) who is working on the case, and the microfilm reference number to an Abstract on the case. It can be seen that much of this information is available to the public from other sources, *e.g.*, commercial publications such as CCH or the various courts handling the cases. The same is true with respect to the remaining records listed above which contain more or less the same information in a different format.

It is arguable that if a particular record makes reference to whether a case is standard or prime, which is clearly exempt information, the entire record is exempt under section 552(b)(2), discussed above. However, it is felt that this would not be adequate reason for classifying the entire record as exempt because the designations standard or prime can be readily masked. Although there is no requirement under the statute for procuring or compiling a new record in order to facilitate the disclosure of information (Attorney General, p. 54), it is doubtful whether the mere "masking" of information would be considered as the procuring or compiling of a new record.

If it is decided not to attempt to exempt the entire RIRA system on the basis of the attorney work-product privilege under (b)(5), perhaps an approach which might avoid these problems and which would be considered in accord with the spirit of the Act, would be to print out for public consumption from RIRA as an entirely new record that information which, after deliberation, the Service feels would be useful to the public but would not damage the litigation position of the Service. By making this information available voluntarily in an acceptable

format, it is possible that the Service would be able to argue that the same information in other formats which include exempt information, would be exempt. The basis for this argument would be that the information is already available to the public in another form.

#### CHIEF COUNSEL BRIEF DIGESTS

There is no exemption applicable to Chief Counsel Brief Digests. A good argument exists that Brief Digests are not "records" within the contemplation of section 552. However, since there would appear to be no harm in making Brief Digests available under section 552(a)(3), it is considered inadvisable to advance this argument in respect of Brief Digests at this time. Accordingly, a proper request for Brief Digests should be honored. If compliance with such requests becomes burdensome, the Service may then wish to argue that Brief Digests are not "records."

The argument that Brief Digests may not be "records" for purposes of section 552 stems from the definition of "record" suggested by the Attorney General and appearing at pp. 52-53 of his Memorandum. Library material made solely for reference purposes is not a "record" within this definition.

Brief Digests are nothing more than summaries of information which have already been made public, that is, summaries of Government briefs filed with the Tax Court. A Digest is never prepared until after the related briefs have been filed with the Tax Court at which time the brief is, of course, a public document. These factors tend to impart an aspect of "library material" to Brief Digests.

#### TAX COURT DIVISION MANUAL

With a qualification noted below, the Tax Court Division Manual is exempt from disclosure under section 552(b)(2).

The Manual contains both general and specialized instructions for processing and handling Tax Court and Court of Appeals cases, together with other procedural matters which are a part of the Tax Court function. It specifically deals with coordination of Tax Court cases having aspects related to other functions of the Chief Counsel's office and to matters pending with the Department of Justice. Also, provision is made for Regional Counsel to establish supplemental procedures and controls within the framework of the Manual instructions.

The Manual is a source book for both the experienced and inexperienced attorney on current procedures and policies. For the inexperienced attorney it also serves as a training book in Tax Court matters.

As noted in its table of contents, the Manual relates to such matters as delegations of authority, non-docketed cases, actions and procedures of the Tax Court, coordination of related cases and technical matters, motions and answers, trial preparation, subpoenas and witnesses, stipulations of fact, settlement or defense, court sessions, deficiencies and overpayments, settlement stipulations, Rule 50 computations, briefs, actions on decisions, matters relating to Courts of Appeals, and general procedures for attorneys and secretaries.

Under section 552(b)(2), protection is afforded to matters that are "related solely to the internal personnel rules and practices of an agency." The House report explains that this exemption protects from public disclosure such matters as "operating rules, guidelines, and manuals of procedure for Government investigators or examiners." In line with this interpretation, Congressman Gallagher explained on the House floor that section 552(b)(2) is intended to protect from disclosure such documents as income tax auditor's manuals (112 Cong. Record 13026, June 20, 1966). The House report cautions, however, that the exemption would not cover all matters of internal management, such as employee relations, working conditions and routine administrative procedures. (H. Rept., p. 10)

The Attorney General (pp. 71-72) emphasizes that the section 552(b)(2) exemption is designed to permit the withholding of agency records relating to management operations in cases where disclosure would result in substantial prejudice to the effective performance of significant agency functions. The memorandum points out, however, that the exemption is not to be invoked to authorize any denial of information relating to management operations when there is no such need for withholding.

As indicated by the Attorney General, all agencies should reexamine those manuals which have been used only internally to ascertain whether they include

standards and instructions which necessarily cannot be disclosed to the public. He further indicates that after any confidential standards and instructions are deleted, documents containing "essential information" of the kind sought to be made available to the public by section 552(a)(2)(C) should be included in the public index and made available for public inspection and copying or published and offered for sale, unless they come within one of the exemptions of section 552(b). (Attorney General, p. 37)

Although the Tax Court Division Manual clearly contains operating rules and guidelines, relative to the disposition of cases, which fall within the exemption of section 552(b)(2), it is recognized that in addition to such exempt material, the Manual may also contain two types of non-exempt material. The first type is that encompassed by the previously referenced section 552(a)(2)(C). The second type of non-exempt information would include those matters of internal management which are in the nature of "routine administrative procedures" (e.g., types of correspondence and the handling thereof, jacket numbers and correspondence symbols.) This type of material is probably of little value to the public. However, the Act provides no exemption for such material so it must be made available, but only upon specific request under section 552(a)(3), and only if it can be properly identified.

It is assumed that those portions of the Manual to which the public may be entitled are contained in other documents readily accessible to the public. Therefore, there would be no reason to make that information available directly from the Manual.

Even though it is conceivable that the exempt material in the Manual could be "masked" and the remainder made available, this is not feasible where the material is so intermingled as to virtually contraindicate "masking." A similar situation arose in conjunction with the classification of one part of the Internal Revenue Manual, that is, after "masking" the exempt material, the remainder was so disconnected as to prompt the decision not to make that part available in the reading rooms. It would seem that the same decision may be applicable to the Tax Court Division Manual. The Manual should be screened, of course, to see whether this is true.

#### DETAILED DISCUSSION RELATING TO EXEMPTION 552(b)(5)

Congress, by exemption (b)(5) has provided that "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency" are exempt from disclosure.

The Senate report (p. 9) reflects both a desire to protect "frank discussion of legal or policy matters" submitted in writing, and a fear that the "efficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to 'operate in a fish-bowl'." In addition, the Senate report (p. 2) indicated that the protection afforded by this exemption "would include the working papers of the agency attorney and documents which would come within the attorney-client privilege if applied to private parties." The House report (p. 10) expressed similar concern, but recognized that "any internal memorandum which would routinely be disclosed to a private party through the discovery process in litigation with the agency would be available to the general public," unless some other exemption bars disclosure. (See also Attorney General's Memorandum on the Public Information Section of the A.P.A., June 1967, 38)

The problem sought to be met by exemption (b)(5) was principally that of prejudicing the usefulness of staff documents by inhibiting internal communications, and the problem of premature disclosure. It is clear that internal communications which would not routinely be available to a party in litigation with the Service, such as most drafts and memorandums between officials or agencies, remain exempt so that the free exchange of ideas will not be inhibited. (Attorney General, pp. 77-78) Were it not for exemption (b)(5), an inter-agency or intra-agency memorandum or letter would be available to the public unless it happened to be protected by one of the other exemptions in section 552(b), or a claim of executive privilege was asserted with respect to it.

In recognition that experience under the discovery provisions of the Federal Rules of Civil Procedure had given rise to a body of law in which the competing needs for privacy and disclosure had been carefully weighed by the courts, Congress, in essence, tailored exemption (b)(5) to the discovery rules. The Government as a litigant is, of course, subject to the rules of discovery. *United States v.*

*Procter and Gamble*, 356 U.S. 677, 681 (1958); *Republic of China v. National Union Fire Insurance Co.*, 142 F. Supp. 551, 556 (D. Md. 1956).

Those provisions of the Federal Rules of Civil Procedure, as amended to July 1, 1966, under which disclosure of inter-agency or intra-agency memorandums might be effected are Rules 26(b), 34 and 45(a), (b), and (d). These rules relate to depositions, discovery and production, and subpoenas, respectively. For purposes of this memorandum only Rule 34 need be discussed.

It is clear that Rule 34 must be liberally construed (*Tiedman v. American Pigment Corporation*, 253 F.2d 803, 808 (4 Cir. 1958)), and that persons seeking to require production of documentary material from the Service under this rule must overcome two major hurdles. First, "good cause" must be shown, and secondly, the data in question must not be "privileged". As to this latter criteria, "the term 'not privileged', as used in Rule 34, refers to 'privileges' as that term is understood in the law of evidence." *United States v. Reynolds*, 345 U.S. 1, 6 (1953).

Within the law of evidence there has developed a privilege for documents integral to an appropriate exercise of the executive's decisional and policy-making functions. Such documents reflect, *inter alia*, advisory opinions, recommendations, and deliberations comprising parts of a process by which governmental decisions and policies are formulated. In striking the balance in favor of non-disclosure of intra-governmental advisory and deliberative communications, the privilege subserves a preponderating policy of frank expression and discussion among those upon whom rests the responsibility for making the determinations that enable government to operate. Investigation is thereby foreclosed into the methods by which a decision is reached, the matter considered, contributive influences, or the role played by the work of others. *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, (D.C D.C. 1966) *aff'd* — F.2d — (D.C. Cir. May 8, 1967). In essence, injury to the consultative functions of government is the underlying consideration *Kaiser Aluminum and Chemical Corp. v. United States*, 157 F. Supp. 939, 946-947 (Ct. Cl. 1958). Numerous other cases support this privilege.

As noted above the Senate report interprets the (b) (5) exemption as including the working papers of an agency attorney and documents which would come within the attorney-client privilege as applied to private parties. (S. Rept., p. 2) Thus, there appears to be congressional recognition of the "attorney-work-product" privilege through exemption (b) (5).

Attorney's work product has been defined as the "impressions, observations and opinions which he has recorded and transferred to his file." *Seourtes v. Fred W. Albrecht Grocery Co.*, 15 F.R.D. 55 (N.D. Ohio 1953). This work product of a lawyer is protected, not because of strict privilege, but because to hold otherwise would interfere seriously with the vital function performed by counsel. *Manning v. State Farm Mutual Automobile Insurance Co.*, 235 F. Supp. 615 (D.C. N.C. 1964). Any problem concerning the discovery of attorney's work product must inevitably start with the case of *Hickman v. Taylor*, 329 U.S. 495 (1947). In that case the plaintiff sought to obtain copies of statements obtained from witnesses by an attorney representing the defendant. The Supreme Court, in sustaining objections to the interrogatories stated as follows (pp. 510, 512):

"Here is simply an attempt without purported necessity or justification, to secure written statements, private memoranda and personal recollections prepared or formed by an adverse party's counsel in the course of his legal duties. As such, it falls outside the arena of discovery and contravenes the public policy underlying the orderly prosecution and defense of legal claims. Not even the most liberal of discovery theories can justify unwarranted inquires into the files and mental impressions of an attorney. . . . The general policy against invading the privacy of an attorney's course of preparation is so well recognized and so essential to an orderly working of our system of legal procedure that a burden rests on the one who would invade that privacy to establish adequate reasons to justify production. . . ."

As a general rule, it may be said that the work product of an attorney is not normally a proper subject of discovery. *Ayers v. Pastime Amusement Co.*, 240 F. Supp. 811 (D.C. S.C. 1965); *Johnson v. Chicago, Rock Island and Pacific Ry. Co.*, 228 F. Supp. 160. (D.C. Minn. 1964); *Radiant Burners, Inc v. American Gas Ass'n.*, 207 F. Supp. 771 and 209 F. Supp. 321 (D.C. Ill. 1962); *Smigel v. Compagnie De Transp. Oceaniques*, 183 F. Supp. 518 (D.C. Pa. 1960). However, even if the courts find that work-product material is involved, they may allow discovery upon a showing of sufficient cause or good cause. *Redfern v. American President Lines, Ltd.*, 228 F. Supp. 227 (D.C. Calif. 1963); *Diamond v. Mohawk*



*Rubber Co.*, 33 F.R.D. 264 (Colo. 1963); *Commonwealth Edison Co. v. Attis-Chalmers Mfg. Co.*, 211 F. Supp. 736 (D.C. Ill. 1962).

As previously indicated, the attorney-client privilege is still another aspect of the section 552(b) (5) exemption. However, an assertion of good cause will not generally overcome a *bona fide* claim of the attorney-client privilege as to data encompassed within an inter-agency or intra-agency memorandum or letter. *United States v. Aluminum Company of America*, 193 F. Supp. 251, 252-254 (N.D. N.Y. 1960); *Ellis-Foster Company v. Union Carbide and Carbon Corp.*, 159 F. Supp. 917, 919 (D. N.J. 1958). Compare, *United States v. San Antonio Portland Cement Company*, 33 F.R.D. 513, 515 (W.D. Texas 1963). In contrast to the conditional aspects of exemption (b) (5), most courts treat the attorney-client privilege as absolute. *Timken Roller Bearing Company v. United States*, 38 F.R.D. 57, 63-64 (N.D. Ohio 1964); *United States v. Gates*, 35 F.R.D. 524 (Colo. 1964).

As a corollary to the above reference to the attorney-client privilege, it would seem that not only may a Government agency claim the attorney-client privilege for appropriate confidential communications passing between the agency, as client, and the Department of Justice as its attorney, but the privilege may likewise be asserted in some cases in regard to communications between administrative personnel and legal counsel of an agency. *United States v. Anderson*, 34 F.R.D. 518, 522-524 (D. Col. 1963). This latter proposition finds some support in those cases recognizing the existence of the attorney-client privilege between corporate management and house counsel; provided that the requisite confidentiality is maintained. *Radiant Burners, Inc. v. American Gas Association*, 320 F. 2d 314, 322-324 (7 Cir. 1963), cert. den. 375 U.S. 929. See also exemption (b) (4) for additional protection for data customarily within the attorney-client privilege.

With respect to criminal proceedings, past case law has made it clear that a litigant may not make use of the liberal discovery procedures applicable to civil suits as a dodge to avoid restrictions placed on criminal discovery and to thereby obtain documents that he would not otherwise be entitled to use relative to the criminal action. *Campbell v. Eastland*, 301 F. 2d 478, 487 (5 Cir. 1962), cert. den. 371 U.S. 955. See also *Capitol Vending Co. v. Baker*, 35 F.R.D. 510 (D.C. D.C. 1964). In this vein, a person may not resort to the Freedom of Information Act to circumvent the discovery provisions of the Federal Rules of Criminal Procedure. The Act is not intended to give a private party indirectly any earlier or greater access to investigatory files than the party would have directly in such litigation or proceedings. (H. Rept., p. 11)

At this point, it is recognized that there are differences between sections 552(b) (5) and 552(b) (7). This latter section exempts from disclosure "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency." The phrase "law enforcement purposes," as indicated by the legislative history of the Act (H. Rept., p. 11), has both criminal and non-criminal aspects. Accordingly, pursuant to section 552(b) (7), an inter-agency or intra-agency memorandum, which would be exempt under section 552(b) (5), is, nevertheless, producible if considered part of a law enforcement investigatory file which must be made "available by law to a private party." For example, in a criminal proceeding, disclosure of an inter-agency or intra-agency memorandum in possession of the Government would be required under the Jencks statute (18 U.S.C. 3500) if a government witness, as preparer of the memorandum, were to testify as to matters contained therein. It is clear that the Jencks statute is applicable to statements prepared by a government agent who becomes a witness at a trial. *United States v. Berry*, 277 F. 2d 826, 830 (7 Cir. 1960); *Holmes v. United States*, 271 F. 2d 635, 638 (4 Cir. 1959).

Thus, it can be seen that Congress by exemption (b) (5) has, in effect, provided that those inter-agency or intra-agency memorandums or letters which are not routinely subject to production under the discovery provisions of the Federal Rules of Civil Procedure do not have to be made available to the public under the Freedom of Information Act. Conversely, to the extent discovery is allowed, and the record is not protected by another exemption, disclosure is required.

In summary of the above remarks:

1. Although the exemption contained in section 552(b) (5) is phrased in terms of inter-agency or intra-agency memorandums or letters, it may also include reports, studies, or similar documents.

2. If the inter-agency or intra-agency document requested contains material reflecting advisory opinions, recommendations, and deliberations comprising

part of a process by which governmental decisions and policies are formulated disclosure is contrary to the public interest and need not be made.

3. The exemption for inter-agency or intra-agency memorandums protects documents containing either mixed factual and opinion material or purely factual material, where such documents are integral to an appropriate exercise of the executive's decisional and policy-making functions. This exemption forecloses investigation into the methods by which a governmental decision is reached, the matters considered, the contributing influences, or the role played by the work of others. It should be recognized, however, that there may be some amount of factual material which would be routinely disclosed through the discovery process. Accordingly, any internal memorandum which would be so routinely disclosed is intended by this exemption to be made available to the general public.

#### ADDENDUM

At the time the transmittal and classification memorandums were prepared, the final version of the Attorney General's Memorandum had not yet been received. In order to avoid delay while awaiting receipt of the final version, reference was made to the most current version of the Attorney General's Memorandum available, *etc.*, the preliminary draft dated May 15, 1967. The final version of the Attorney General's Memorandum, dated June 1967, has now been received. For convenience, there is set forth below the pages of the final version which correspond to those pages of the preliminary draft which have been cited in the transmittal and classification memorandums.

	Page of Attorney General preliminary draft cited	Corresponding page in Attorney General final version		Page of Attorney General preliminary draft cited	Corresponding page in Attorney General final version
Page of transmittal memorandum on which Attorney General cited:			Page of attachment II on which Attorney General cited—continued		
3.....	56	24	20.....	74-76	32-34
3.....	viii	2	21.....	74-76	32-34
4.....	37-38	17	23.....	82-83	37-38
4.....	iv	iv	25.....	74-76	32-34
Page of attachment II on which Attorney General cited:			26.....	53	23
1.....	52-53	23	30.....	74-76	32-34
1.....	71	30	30.....	80	36
4.....	71-72	31	31.....	86-87	39
5.....	35	16	33.....	34	16
5.....	37-38	17	33.....	42	19
6.....	71-72	30	33.....	47	21
7.....	71	30	33.....	49	22
14.....	79-80	36	34.....	35	16
15.....	71	30	39.....	71-72	30-31
15.....	71-72	31	40.....	71	30
16.....	74-76	32-34	42.....	52-53	23
17.....	71	30	44.....	52-53	23
18.....	72	31	45.....	71	30
18.....	74-76	32-34	55.....	54	23-24
20.....	71-72	31	57.....	71-72	30-31
			58.....	37	17
			59.....	77-78	35

#### APPENDIX IV

##### RESPONSE OF COMMISSIONER ALEXANDER TO QUESTIONS SUBMITTED BY SENATOR KENNEDY

##### DEPARTMENT OF THE TREASURY.

##### INTERNAL REVENUE SERVICE.

Washington, D.C., January 17, 1975.

HON. EDWARD M. KENNEDY,

Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN KENNEDY: Enclosed is our response to the questions regarding the disclosure policies and practices of the Internal Revenue Service, which you submitted in your letter of September 20, 1974.

We are in the process of developing procedures to implement the 1974 amendments to the Freedom of Information Act (P.L. 93-502). We will let you know when these procedures have been finalized and will provide you with copies of them.

I am sorry that it took so long to prepare our answers to the questions raised in your letter.

With kind regards,  
Sincerely,

DONALD C. ALEXANDER.

Enclosure.

#### QUESTIONS SUBMITTED TO THE SERVICE BY SENATOR KENNEDY ON SEPTEMBER 20, 1974

1. We discussed for some time the question regarding access by the White House and other entities to tax return information. Section 6103(a)(2)(B), of the legislation proposed by the Administration on this subject would appear to require the withholding of broad categories of IRS documents which are now or may be required to be made public under the Freedom of Information Act. Specifically, paragraphs. (ii)-(iv) would require the withholding of all tax rulings issued before the date to be inserted in the statute, along with such other documents as potentially all internal memoranda, reports, comments on regulations, guidelines, and instructions of less than general applicability.

*Question 1a.* Can you specifically describe the intent of this proposed section as to restricting disclosure of any document which is now being made public by court order or agency discretion, as well as by agency interpretation of any direct mandate of the freedom of Information Act? Please describe documents involved.

Reply. Perhaps the most succinct description of the intent of the definition of "return information" in section 6103(a)(2)(B) of the Administration proposal is the following from the narrative description which accompanied the proposal:

The proposed new definition of "return information" is intended to cover information of any kind filed with, or compiled by, the Service which relates to a taxpayer's past, present, or future tax liability. The new definition would specifically cover private letter rulings issued pursuant to a request made before enactment of this legislative proposal and all requests for technical advice made by Service personnel to the National Office, regardless of when made. Future private ruling letters generally would be confidential only to the extent permitted by the Freedom of Information Act or other Federal legislation. Also protected is tax information furnished to the Secretary or his delegate in connection with tax administration and accepted by him as confidential pursuant to regulations.

This section codifies the agency practice in disclosing information received by the Service which relates to a tax return, and would not restrict any information currently being made available by the Service under the Freedom of Information Act.

Regarding court decisions, section 6103(a)(2)(B) would codify the result reached by the D.C. Court of Appeals in *Tax Analysts and Advocates v. Internal Revenue Service*, — F.2d — (D.C. Cir. 1974), regarding technical advice memoranda. It would also change the law regarding availability of private letter rulings as determined by the D.C. Court of Appeals opinion. If enacted past private letter rulings would be specifically exempt from disclosure by statute under exemption (b)(3) of the Freedom of Information Act.

*Question 1b.* In what way is this section intended to limit disclosure generally beyond the matters presently permitted to be withheld under the Freedom of Information Act.

Reply. The answer to this question depends, of course, upon resolution of what is presently permitted to be withheld under the Freedom of Information Act. In *Tax Analysts and Advocates v. Internal Revenue Service*, — F.2d — (D.C. Cir. 1974), we argued unsuccessfully, as you know, that certain private letter rulings issued between July 26, 1968 and October 1, 1971, were specifically exempted from disclosure by section 6103 of the Code and, therefore, were not subject to disclosure under the Freedom of Information Act. I continue to believe that our position on this issue was and is correct. Nevertheless, proposed section 6103(a)(2)(B)(ii) addresses itself directly to the question of the application of section 6103 to private letter rulings issued pursuant to a request received on or before the enactment date to be inserted in the statute and would make it clear, contrary to the Court of Appeals decision cited above that past private letter rulings are not available under the Freedom of Information Act.

**Question 1c.** Will enactment of this section without amendment result in overruling the Court of Appeals decision in the Tax Analysts case? Please identify any other judicial decisions which would be affected by enactment of this section.

Reply. If enacted, proposed section 6103(a)(2)(B)(ii) would alter the law concerning private letter rulings as indicated in the Court of Appeals position in the *Tax Analysts and Advocates case*. It would also codify the position adopted by the Court of Appeals for the District of Columbia regarding technical advice memoranda. The section would also modify the position reflected in the *Fruchauf Corp. v. United States*, 369 F. Supp. 108 (E.D. Mich. 1974). The district court held certain excise tax private letter rulings issued between January 1, 1947 and June 26, 1973, to be outside the protection of Code section 6103. It was held that technical advice memoranda were outside the protection of that section. The *Fruchauf* case is currently on appeal to the Sixth Circuit and is waiting decision after oral argument.

**Question 2.** You indicated that the IRS was presently formalizing procedures to record all contacts made to the Service regarding White House access to tax return information and would shortly release the procedures publicly. Have these procedures been formalized and released?

Reply. Yes. On August 9, 1974, an Information Notice was issued to instruct Internal Revenue Service employees of procedures to be followed with respect to disclosing tax returns and tax return information to members of the White House Staff. A copy of the notice, transmitted to your office on August 9, 1974, is enclosed as Exhibit A. These procedures require that any officer or employee of the Service who receives a White House request for tax returns or tax information shall communicate the contents of the request to the Commissioner, who will evaluate the request. Only the Commissioner, or in his absence the Deputy Commissioner, will make tax returns or tax information available to the White House.

On August 22, 1974, a news release was issued to this effect (see Exhibit B). A revision of Chapter (19)00 of the Disclosure of Official Information Handbook, IRM 1272, containing instructions for processing tax check requests, was also published (see Exhibit C). Copies of the Information Notice and Chapter (19)00 of the Disclosure Handbook were attached to the news release.

On September 20, 1974, President Ford signed Executive Order 11805, which requires that any request for inspection or copies of tax returns by the President shall be made only upon written request signed by the President himself (enclosed as Exhibit D). Only those White House personnel designated by the President will be authorized to receive or inspect such information.

**Question 2a.** Will the record (names or numbers) of White House requests be a public record? Will it be furnished regularly to the Joint Committee?

Reply. The number of requests, the number of taxpayers involved, and the number of returns requested by the White House are included and will continue to be included in the semi-annual disclosure report prepared for the Joint Committee on Internal Revenue Taxation. The report does not and will not include the names of the taxpayers or other identifying information. The IRS does not presently make this report available to the public. However, we are now considering whether we should make it public in the future.

**Question 2b.** Will a taxpayer be able to find out whether his return or information has been requested or made available to the White House under these new procedures?

Reply. Our revised procedures do not contain provisions for informing the taxpayer that his return or other information has been requested by or made available to the White House. This information usually is requested in connection with an appointment to a high level position and is run through my office for control and avoidance of possible improper use. Since the taxpayer may not be aware that he is one of several being considered for such appointment, we do not feel that the Service should make this information routinely available to the taxpayer. However, if a taxpayer would ask us or had asked us on prior occasions whether his return or other information had been made available to persons outside the Service, including the White House, we would answer the inquiry.

**Question 3.** You stated that the allegation that certain IRS employees had improperly supplied the White House with information about tax returns and audit activities was under investigation which would shortly be concluded. Can you provide us with the status or results of this investigation?

Reply. These matters are still under investigation. I repeat the hope that this investigation will be completed soon, but I can make no predictions.

**Question 4.** The "tax check" procedure was the subject of discussion at our hearings, and you indicated that this procedure is "under consideration." Has any final determination been made to modify or tighten up the "tax check" procedures outlined in IRM (19)00, which were supplied for our record? If so, when will these changes be made and what kind of modifications are projected?

**Reply.** On August 22, 1974, Chapter (19)00 of the Disclosure of Official Information Handbook, IRM 1272, was revised to require that tax check reports be furnished only upon written request by a designated official of the requesting agency, and to have the report contain only specified tax information. A copy of this document, submitted for the record on August 23, 1974, is enclosed as Exhibit C.

Reports are now limited to the following: (1) Whether such person has filed returns with respect to taxes imposed under Chapter 1 of the Internal Revenue Code for not more than the immediately preceding three years (but dates of filing are not given); (2) Whether such person owes any unpaid taxes (but amounts are not given) and, if so, for what years; (3) Whether such person has been or is under investigation for possible criminal offenses under the internal revenue laws and the results of such investigation; and (4) Whether such person has been assessed any penalty for fraud or negligence.

**Question 4a.** Can a taxpayer find out from the Service whether a tax check is being or has been made on him? If not, should this information be available to the taxpayer?

**Reply.** Tax checks are requested in connection with pending employment, and applicants may or may not be aware that a tax check has been requested. However, as we stated in our reply to question 2b above, a taxpayer may not know that he is one of several under consideration for a Presidential appointment. At the present time, the Service makes this information available to the taxpayer only upon his or her request. However, our procedures in this regard may be re-evaluated as a result of the Privacy Act of 1974.

**Question 5.** During our April 1 hearings concern was voiced over the meaning of the IRS administrative directive suggesting that a taxpayer may waive his privilege surrounding his tax return if, for example, he communicates with the news media or his Congressman. We discussed these Congressional inquiries at the hearings on July 31.

(a) Can you clarify the nature and scope of this waiver as applied to the taxpayer requests to Congress for assistance?

(b) You indicate that you have initiated "new procedures" in this area. Can you provide a description or copy of these procedures for our record?

**Reply.** The administrative directive mentioned in this question and subject to discussion during your April 1 hearings have been superseded by Manual Supplement 12G-88, dated May 6, 1974. A copy of this document was transmitted to your office on September 20, 1974 (see Exhibit E).

Manual Supplement 12G-88 clarifies the nature and scope of a taxpayer's waiver of privilege when he communicates with a member of Congress about some action the Service has taken or failed to take with respect to his tax matters. In such a situation, the Service takes the position that the taxpayer has made a limited waiver of the privilege of confidentiality with respect to his tax affairs, and there is no legal restriction preventing the Service from disclosing specific information required to place in proper context the matter on which the privilege has been waived. A taxpayer's waiver of privilege as to a portion of his tax affairs does not legalize or justify disclosure of all of his tax affairs. Indeed, the Service will limit its response to the factual situation presented by the taxpayer and disclose only that information required to do so.

Consideration is now being given to further modifications to provide for the recognition of an oral waiver in emergency situations. Personnel will be reminded, however, that except in such situations written waivers will be required in order to clearly ascertain the extent of the taxpayer's waiver of confidentiality.

**Question 6.** The subject of the handling of "sensitive cases" came up at both our April 1 and our July 31 hearings. You indicated that this entire procedure was under review and that new procedures would be promulgated and supplied to the Subcommittee within the three or four weeks. Have such procedures or rules been promulgated. If so, please supply these for your record. If not, when do you expect them to be finalized?

**Reply.** As an initial step in our plan for review in this area, the existing sensitive case reporting system was suspended. This is shown by the enclosed Manual

Supplement (Exhibit F). It will remain suspended until we can develop and implement procedures for an acceptable alternative. If we do develop an alternative system, we will furnish your office with copies of the new procedures.

*Question 7.* You indicated that, pending review, the transfer of sensitive case information outside the IRS has been suspended. Is this practice still under suspension?

Reply. The transfer of sensitive case information outside the IRS has been, and remains, suspended.

*Question 8.* Can you give us some idea of the numbers of taxpayers considered "sensitive," the volume and nature of sensitive case information, including numbers of taxpayers) annually transmitted by the IRS to Treasury and by IRS or Treasury to officials outside the Treasury Department?

Which agencies or officials outside Treasury receive information on or notification of action on sensitive cases on either a regular or intermittent basis?

Reply. As of October 31, 1974, just prior to the date that sensitive case procedures were suspended, we had 760 open cases. Now that the system has been suspended, of course, no agencies or officials including Treasury, receive information or notification of action on sensitive cases.

*Question 9.* Would you provide further comment on whether the apparent inequity of treatment for sensitive cases suggested in IRS internal directives, as alleged by the Longs in their April 1 testimony, has been found in your review of this process and, if so, what is being done to correct this inequity?

Reply. The Longs imply that the designation of taxpayer as a sensitive case prescribes special treatment. The designation "sensitive case" and the attendant reporting system had as its objective keeping the appropriate Service offices and management levels adequately informed of significant tax issues and matters likely to be the subject of inquiries from outside the Service. There has never been an objective to treat some taxpayers differently from others.

Currently, the sensitive case reporting system is suspended and will remain so until a system can be developed that will keep appropriate Service officials adequately informed, yet not be interpreted as providing special tax treatment.

*Question 10.* Have specific procedures been devised to implement the new policy of disclosure of rulings announced at our hearings in July beyond those contained in the August 9, 1974, IRS news release? If so, will you provide these to the Subcommittee?

(a) When do you expect this new policy to be fully implemented?

Reply. Proposed procedures have been drafted and were published in the Federal Register on December 10, 1974 (see Exhibit G). A copy was transmitted to your office on December 7, 1974.

In accordance with Senator Kennedy's suggestion in a letter to the Commissioner, the Service is affording the public an opportunity to comment on the procedures before implementing them formally. Thus, while proposed procedures have been published, the procedures will not be finally implemented until comments from the public have been received and considered by the Service, and the proposed procedures have been revised to the extent indicated by such comments.

*Question 11.* Since the Service will be, under new procedures, prospectively releasing tax rulings, is consideration being given to prospective disclosure of technical advice memoranda under the same rationale? If not, how are technical advice memoranda practically distinguishable from rulings?

Reply. Consideration is not being given to prospective disclosure of technical advice memoranda under section 6103. The Court of Appeals in its opinion in the *Tax Analysts* case distinguished private letter rulings from technical advice memoranda as follows:

... Letter rulings are issued at the request of taxpayers seeking advice as to the tax consequences of specific transactions. This information provides guidance in planning and conducting their business affairs and, if the transaction is consummated, aids in preparation of their tax returns ...

Conversely, technical advice memoranda are prepared in response to an inquiry by a District Director as to the treatment of a specific set of facts relating to a tax return filed by a named taxpayer involving either an audit or in connection with the taxpayer's claim for refund or credit of taxes ...

*Question 12.* As you know, the Tax Analysts decision was rendered last month requiring the IRS to disclose past tax rulings. Has the decision been made yet whether the government will seek certiorari to the Supreme Court, and if so, what is that decision? Have any procedures been instituted to implement the court's decision in this case with respect to pending and future requests for past tax rulings?

Reply. The government has decided not to petition the Supreme Court for a writ of certiorari in the *Tax Analysts and Advocates* case. However, the same issue is currently pending with the Sixth Circuit in *Fruchauf Corp. v. United States*, 369 F. Supp. 108 (E.D. Mich. 1974). That case has been submitted to the Sixth Circuit for decision after oral argument and briefing and a decision is expected shortly. Whether the Service will continue to litigate the issue will be determined when the Sixth Circuit renders its decision.

The Service will provide to the plaintiffs the requested documents in the *Tax Analysts and Advocates* case subject to the deletions permitted by the district court under the Freedom of Information Act.

In light of the proposed legislation and the pendency of the *Fruchauf* case no formal procedures for disclosing past tax rulings have been established.

*Question 13.* You stated you would be furnishing the Subcommittee for the record the current status of disclosure of manual materials. The insertion provided for our record refers to major parts of the manual. Please provide us with a further breakdown by chapter of materials that are (a) available in their entirety, (b) available with exceptions (please specify exceptions), (c) unavailable pending review, and (d) withheld as exempt under the Freedom of Information Act.

(a) For those materials presently under review, will you provide the Subcommittee with a time schedule for expected completion of review.

Reply. Exhibit H lists current IRS Manual chapters and handbooks that are (a) available in their entirety, (b) available with exceptions, (c) exceptions, and (d) withheld as exempt under the Freedom of Information Act.

Our review of the Internal Revenue Manual has been completed and all materials are presently classed in one of the above categories.

*Question 14.* At our last hearing Mr. Gibb, head of the disclosure staff, stated that regional and district directives corresponding to the IRM would be made public and that "instructions are in process currently" to allow field personnel to declassify field materials under the same categories used by the national office for the Manual. Have these instructions been issued? If so, please supply us with copies, if not, can you give us a target date for issuance?

Reply. Field officials were instructed on August 30, 1974 that their memoranda and circulars are not to be classified as "Official Use Only" unless they contain materials the same as, or similar to, material so classified in either the IRS Manual or the ADP Handbooks issued by our National Office. A copy of these instructions, transmitted to your office on October 2, 1974, is enclosed as Exhibit I. Additional instructions in this regard are also being presently processed and will be furnished to your office when finalized. In addition a training course relating to internal management documents and the Freedom of Information Act was conducted for field officials from October 21 through 24 of last year.

*Question 15.* Mr. Wilsey indicated at our hearing that final updates on IRS submissions to the Justice Department Freedom of Information Consultation Committee were to be provided no later than August 5, that a meeting would take place shortly thereafter, and that a final determination on release of statistical materials would at that time be made.

*Question 15a.* Will you give us the present status of this consultation process, including when the IRS submitted its updated material and what has happened subsequently?

Reply. A meeting between representatives of IRS and the Department of Justice Freedom of Information Consultation Committee was held on August 21, 1974. As a result of that meeting, it was decided to make available pursuant to the Freedom of Information Act all statistical data compiled within IRS which has been requested to date with the exception of data which would serve to identify specific taxpayers. In addition, it has been decided that, for the most part, statistical data generated under the Taxpayer Compliance Measurement

Program (TCMP) will not be made available to the public, since its disclosure would enable taxpayers so inclined to predict IRS' enforcement strategies. Reply to questions 15b and c contain additional details.

*Question 15b.* Specifically, what statistical reports or materials were the subject of this consultation?

Reply. The consultation concerned various statistical material sought by Mr. and Mrs. Long under the Freedom of Information Act. The Longs filed numerous requests for such material, generally seeking operational statistics, including reports on the type and amount of audit activity, manpower utilization reports, delinquent returns surveys, and other similar material. A list of the material sought is enclosed as Exhibit J. The specific items on the list have been approved for release to the Longs, except as noted in our reply to question 15c.

*Question 15c.* Please provide in detail the final decision as to each of these items. For those items determined to be covered by exemptions to the Freedom of Information Act, which the Service has decided to withhold pursuant to Freedom of Information Act exemptions, please explain the reasons for the withholding.

Reply. With one exception, all the statistical reports requested by Mr. and Mrs. Long (and subject to the consultation with the Department of Justice) have been approved for release. The exception relates to the district Reports on Large Deficiency and Overassessment Cases, NO-CP:A-114. Those reports contain the names of taxpayers and dollar amounts of their deficiencies or overassessments. Materials which identify specific taxpayers are considered exempt from disclosure under the provisions of 5 U.S.C. 552(b) (3). The release of such data would compromise the confidentiality of taxpayer information subject to protection under 26 U.S.C. 6103 and 7213 and by 18 U.S.C. 1905.

*Question 16.* At our hearings I referred to specific requests brought to the Subcommittee's attention from Mr. and Mrs. Long, Mr. Brandon, and Mr. Irish. Will you provide us with the current status of requests by those persons which have been pending for over a year?

Reply. The *Long* request, to which reference was made at the July 31, 1974 hearings, was discussed in the response to Question 15.

The *Brandon* request, to which reference was made at the July 31, 1974 hearings, has been filled by furnishing all documents requested except Forms 4062, Quarterly Report of Joint Committee Cases, and 4451, Large Case Status Report. The excepted reports contain taxpayer identification (see response to 15c).

The *Irish* request, for an unedited version of one of the handbooks in the IRS' manual system, has been substantially filled by providing an edited copy. The portions deleted from that handbook are considered to be protected from disclosure under the Freedom of Information Act. The IRS position in this regard has been substantially approved by the Department of Justice Freedom of Information Committee.

*Question 17.* Public witnesses had suggested several apparent problem areas contributing to inordinate delays in obtaining information from the IRS under the Freedom of Information Act. These include a lack of priority for FOIA requests by the operating divisions in clearing release of documents, the absence of an effective monitoring system to speed responses through the process, and the lack of adequate assistance to persons seeking information.

*Question 17a.* Has the Service taken any recent steps to improve agency performance in responding more rapidly to FOI requests?

Reply. We have increased the staff of the Freedom of Information Branch with technical and clerical people, and this should improve our performance in responding more rapidly to FOI requests. We have instituted followups of documents in the clearance process to expedite the flow of FOIA correspondence to requesters. We have also decentralized the authority to declassify internal management documents to field officials, declassified more than 95% of the pages in the Internal Revenue Manual (which is the subject of many FOIA requests), and authorized field personnel to make those documents available to the public. This eliminates the need for forwarding FOIA requests for declassified portions of the Manual to the National Office. We have also conducted meetings with and made telephone calls to requesters on a case-by-case basis to assist them to formulate their requests under FOIA when we did not understand their inquiries as first presented to us. Our instructions to field people will require that assistance be provided to the public to help people formulate their requests under the Act.



*Question 17b.* As you may know, the House Senate Conference Committee approved a final version of legislation (H.R. 12471) allowing agencies ten days to respond initially to a request for information, and twenty days on appeal. Is the IRS prepared to meet the time limits required by this legislation?

Reply. We believe that the time limits provided by the recent amendments to the FOIA will be administratively burdensome. Our experience indicates that such time limits will be generally adequate in responding to fairly simple requests for readily identifiable documents where large volumes are not involved. In all probability, a large number of requests will fit that description. On the other hand, the time limits will be difficult to meet for requests involving large numbers of documents that have not been previously screened for release. An example is a request for any and all investigative files on a particular person or firm which may require accumulation of vast amounts of documents and page-by-page review to prevent disclosure of materials which would interfere with enforcement proceedings or otherwise be exempt under 5 U.S.C. 552(b). For such requests, it will be most difficult to make final determination within the time limits prescribed. Although the time limits will impose a serious burden on the Service and will involve considerable expense, every reasonable effort will be made to fully comply with the requirements of the amendments.

*Question 17c.* Are taxpayer service or other personnel in field offices provided guidance or instructions on offering assistance to a person needing help in formulating his request for information and in describing the records sought?

Reply. Instructions are currently being developed that will guide field personnel on the assistance to be provided persons needing help in formulating Freedom of Information Act requests. We are also considering a proposal to establish in each Regional Office, District Office, and Service Center an appropriately trained disclosure representative. Disclosure representatives will be assigned responsibilities in connection with local disclosure and Freedom of Information activities, including the responsibility for assisting the public in formulating requests.

*Question 17d.* Testimony on July 31 suggested that steps were being taken to implement procedures to regularly inform and authorize field offices to make available to the public information released by the National Office under the Freedom of Information Act. Please provide us with any regulations or directives issued on this subject, or a target date for their promulgation. Has consideration been given to establishing a similar procedure for releasing records other than the Internal Revenue Manual, perhaps through publication of a description of available but not generally distributed documents in the Internal Revenue Bulletin?

Reply. Authority for the release of information by our field offices is being expanded by the continued declassification of Internal Revenue Manual materials and other internal management documents issued locally. Of course, the field officials have had authority to make available records that were not subject to statutory restrictions or designated for "Official Use Only." That authority extends to records other than the Internal Revenue Manual. As previously mentioned, a training course relating to internal management documents and the Freedom of Information Act has been conducted for field officials and instructions relating to these subjects are presently being processed. Although formal instructions have not been released, field officials have been instructed to proceed with declassification on the basis of a draft of the document containing detailed guidelines. In addition, Manual Transmittals which convey declassification information to field officials will continue to be released.

We have considered publishing notification of materials released under the Freedom of Information Act in the Internal Revenue Bulletin; however, this is not an appropriate vehicle for such announcements. The Internal Revenue Bulletin, while available to the general public, has a circulation limited primarily to accountants, attorneys, and other tax practitioners.

For the most part, we have relied on a reading room index to inform public interest groups, the news media, individuals with a specific interest and others of the availability of IRS materials. The release of new material has been widely publicized in *Tax Notes*, published by Tax Analysts and Advocates, and in the news media. Numerous releases have been announced in the Wall Street Journal.

To further publicize the release of material under the FOIA, we are designing a procedure to notify the public through news releases. Our public affairs people

will evaluate the materials released to make a determination of general public interest.

Our public affairs and disclosure personnel have been available for assistance. As we gain additional experience in what documents or types of records are of general interest, we will consider alternative means for preparing and distributing lists of available documents.

*Question 18.* Witnesses at our earlier hearing suggested that the Service is charging 10¢ per page for copying of printed material requested by the public. The proposed revision of the Freedom of Information Act (H.R. 12471), in discussing availability of non-printed indexes, provides that the agency may not charge more than the "direct cost of duplication." What is the "direct cost" of duplicating printed materials (excluding overhead, etc.), and will the IRS consider utilizing this standard for photocopies of printed materials?

Reply. Since the 1974 amendments require a uniform schedule of fees applicable to all constituent units of the agency and defines "agency" as executive department, the IRS will make charges for search and duplication under the schedule of fees promulgated by the Treasury Department. The Treasury department's proposed regulations in this regard were published in the Federal Register on January 16, 1975. A copy is enclosed as Exhibit K.

*Question 18a.* Would it be possible for the public to subscribe to periodic internal publications which must be made available on request but which are ordinarily not promoted for sale to the general public?

Reply. Subscription services for periodic Federal Government publications are the responsibility of the Government Printing Office. The Government Printing Office already sells subscriptions to *IRS Regulations* and the *Weekly Bulletin*, the latter being a publication for announcing official rulings, procedures, Treasury decisions, legislation, court decisions, and other items of general interest. If they were to set up a similar system for the public portions of the Internal Revenue Manual, we would be happy to give them our full cooperation.

Also much of the Internal Revenue Manual is currently published for commercial distribution by two private concerns. Tax Analysts and Advocates publish a weekly service for tax practitioners and the press entitled *Tax Notes*. This publication summarizes Internal Revenue Manual changes, Treasury correspondence, the bills prepared by Treasury with respect to legislation, and Securities Exchange Commission tax data. It offers a complete text of any document summarized. Commerce Clearing House publishes the Internal Revenue Manual as a separate tax service. They have also published certain Internal Revenue training courses and other documents they considered to be saleable.

#### EXHIBIT A

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
Washington, D.C., August 9, 1974.

Re: Information notice No. 74-23.

Subject: Disclosure of tax returns and tax information to members of the White House Staff.

This is to inform Service employees of the procedures which should be followed with respect for tax returns and tax information from members of the White House Office. The White House Office comprises the offices and employees of the staff of the President required in the performance of the detailed activities incident to his immediate office. Any officer or employee of the Internal Revenue Service who receives a request for tax returns or tax information from a member of the White House Office shall promptly communicate the contents of the request to the Commissioner through the head of the office in which he serves. The Commissioner will evaluate the request and will ask the Assistant Commissioner (Compliance to prepare whatever reports may be necessary in the same manner as provided by sections (18)30(1)(b) and (3) of IRM 1272. Disclosure of Official Information Handbook. Only the Commissioner, or, in the absence of the Commissioner, the Deputy Commissioner, will make the report, the tax returns, or tax information available to the members of the White House Office. These procedures will be made a part of the Disclosure of Official Information Handbook, IRM 1272. The institution of these procedures is intended to include the Special Tax Check Report Program established by Chapter (19)00 of IRM 1272. Disclosure of Official Information Handbook. Pending revision and

republishing of Chapter 19(00) of IRM 1272, the information submitted pursuant to a report under this Program should be limited to whether an individual has filed income tax returns with respect to the immediately preceding three years, has failed to pay any tax within 10 days after notice and demand, has been under any criminal tax investigation and the result of such investigation, or has been assessed a civil penalty for fraud or negligence.

DONALD C. ALEXANDER, *Commissioner*.

#### EXHIBIT B

DEPARTMENT OF THE TREASURY,

INTERNAL REVENUE SERVICE,

Washington, D.C., August 22, 1974.

Re: News Release No. IR-1413.

WASHINGTON, D.C.—The Internal Revenue Service has issued formal instructions to all of its employees that place strict limitations on the furnishing of tax returns and tax information to the White House.

The instructions, which had been previously conveyed orally to key IRS officials, provide that requests from the White House must be in writing and may be responded to only by the Commissioner of Internal Revenue. In the Commissioner's absence, only the Deputy Commissioner may act for him in this regard. No other IRS officials will be empowered to act in their absence.

The IRS action is in accordance with testimony given by Commissioner Donald C. Alexander on July 31, 1974 before the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee.

Copies of IRS Information Notice 74-23 containing the formal instructions and a revised portion of the Internal Revenue Manual dealing with Special Tax Check Reports are attached.

#### EXHIBIT C

Re: Internal Revenue Service Manual Transmittal No. 1272-6.

AUGUST 22, 1974.

#### PURPOSE

This transmits revised material for IRM 1272, Disclosure of Official Information Handbook.

#### REMOVAL AND INSERTION OF PAGES

*Remove.*—Text (19)00—(19)70:(3) (f)

*Insert.*—Text (19)00—(19)70:(3) (f)

#### NATURE OF CHANGES

Chapter (19)00 has been revised to require a written request by a designated official, who is charged by the head of the requesting agency with the responsibility for such requests, before the National Office will request a special tax check report, and to have the special tax check report contain only specified tax information concerning Chapter 1 of the IRC of 1954.

DONALD C. ALEXANDER, *Commissioner*.

#### (19)00 SPECIAL TAX CHECK REPORT

(19)00 *General.*—(1) The National Office will request tax check reports on prospective Presidential appointees, on nominees for Presidential "E" Awards established by Executive Order 10978, and on certain other persons. Generally, these tax records checks are made to supplement investigations concerning the character, loyalty, or suitability of such prospective appointees or nominees. We cannot emphasize too strongly the need for prompt, completed, and discreet processing of these requests.

(2) Requests for tax check reports will be made by the National Office only pursuant to a written request signed by a designated individual who is charged by the head of the requesting agency with the responsibility for such requests.

(3) Tax record checks should be confined to taxes imposed by Chapter 1 of the Internal Revenue Code of 1954.

(4) When field contact with the taxpayer is required, the Director may assign any officer he deems appropriate to perform this task. In this respect, any attempt to substantiate the filing of a return by telephone is not desirable and should be discouraged.

(5) If in the judgment of the Director certain information is of such a nature that it should not be transmitted by teletype, the report should state that additional information is being forwarded by memorandum.

(19)00: *Type "X" Reports.*—(1) Communications from the National Office for reports on prospective appointees will ask for a Type "X" Report.

(2) District offices should submit a teletype report to the National Office, Attention: CP:D, within three workdays after receipt of the request. The report should be in the format described in (19)50. If complete data is not assembled within the time limit, a report should be sent containing any partial information available, and should indicate the approximate period of time needed to complete the report.

(3) In "no record" cases a field contact in accordance with established procedure should be made with the taxpayer to substantiate whether returns were filed and to determine the place of filing.

(a) These inquiries should be conducted as discreetly as possible, giving no indication to the taxpayer that anything other than a routine check is being made.

(b) Upon field contact, if the taxpayer indicates he has filed his returns in another district, immediately teletype identifying information to the District Director and request that a collateral Type "X" Report be submitted directly to the National Office, Attention: CP:D. Also advise the National Office of such action.

(c) If a field contact is not desirable, the National Office teletype or other communication will contain specific instructions that the taxpayer will not be contacted under any circumstances for information because of the request.

(4) In failure to file cases, returns should not be solicited without first consulting the Intelligence Division.

(19)30: *"E" Award Reports.*—(1) Communications from the National Office for reports on nominees for "E" Awards will ask for an "E" Award report.

(2) District offices should submit a report to the National Office within five workdays after receipt of the request. The report should be in the format described in (19)50.

(a) If complete data is not assembled within the time limit, a report should be sent containing any partial information available, and should indicate the approximate period of time needed to complete the report.

(b) Reports should be made by memorandum using the fastest available mail service.

(3) In "no record" cases, the same procedures as prescribed for Type "X" Reports in (19)20:(3) should be followed.

(19)40: *Service Center Participation.*—(1) Because of the transfer to service centers of information on outstanding balances, and because of the increasing importance of service centers in our over-all operations, district offices in preparing tax check reports should make such arrangements as may be necessary with service centers to obtain the required data so that complete and accurate reports will be furnished to the National Office. This may impose additional work on district offices, but with our decentralized operations, the National Office is unable to assume the responsibility for coordinating all details on individual cases of this nature.

(2) The responsibility for submitting tax check reports to the National Office will, therefore, still lie with the District Director concerned.

(19)50: *General Format of Reports.*—(1) The general format for making Type "X" Reports, "E" Award Reports, or other similar reports follow:

(a) Name or title of report (Type "X" Report) or ("E" Award Report).

(b) Name and address of person, firm, or organization.

(c) Furnish statements indicating:

1 Whether such party has filed returns with respect to taxes imposed under Chapter 1 of the Internal Revenue Code for not more than the immediately preceding 3 years.

2 Whether such party owes any unpaid taxes and, if so, for what years.

3 Whether such party has been or is under investigation of possible criminal offenses under the internal revenue laws and the result of such investigation.

4 Whether such party has been assessed any penalty for fraud or negligence. (19)60: *Tax Checks on Treasury Employees*.—(1) Requests for tax checks on Treasury employees (other than Internal Revenue Service employees) will be initiated by bureaus or offices of the Treasury by use of Treasury Department Form TD 4002.

(2) District offices should complete items 10 through 15 of Form TD 4002 no later than 10 workdays after receipt of the request.

(3) If a lien was filed (item 11(b)), furnish the name, address, amount, date and place of filing, and date of release in item 15.

(4) The completed form should be initiated to the originating office by use of double-sealed mailing, the inner envelope to be marked, "To Be Opened By Addressee Only."

(5) In "no record" cases it will not be necessary to contact the taxpayer unless a specific request is received from the Treasury office concerned. In failure-to-file cases, returns should not be solicited without first consulting the Intelligence Division.

(6) If district offices receive requests for additional information regarding items 10 through 15, the request, together with the proposed reply to the requesting Treasury office, should be transmitted to the National Office, Attention: CP:D.

(19)70: *Tax Audits in Connection with Type "X" Reports*.—(1) Treasury Administrative Circular 189, dated May 12, 1969, (since revised) established requirements for preappointment tax audits on persons not already on Treasury rolls selected for high-level positions, such as Heads of Treasury Bureaus, Assistant Commissioners of Internal Revenue, and Presidential appointments, including persons serving on Presidential Committees.

(2) The responsibility for initiating and coordinating the audits is assigned to the Disclosure Staff, Office of the Assistant Commissioner (Compliance), CP:D.

(3) When the Director, Office of Personnel, Treasury Department, determines that a tax audit on a prospective Treasury appointee is needed, he will ask the Disclosure Staff to initiate the audit.

(a) The Disclosure Staff will telephone the District Director in whose district the taxpayer resides to obtain the returns from the service center or Federal Records Center and to assign an Internal Revenue Agent to make the audit.

(b) If the prospective appointee has already moved from his permanent residence to the Washington, D.C., area, it may be advisable to ask the District Director, Baltimore District, or the District Director, Richmond District, to conduct the audit.

(c) If a return for one of the open years has been examined under established procedures, it will not be necessary to re-examine the return. However, a report of the previous audit should be furnished to the Disclosure Staff.

(d) A regular Type "X" Report should be furnished as soon as possible in accordance with established procedures without waiting for the completion of the audit.

(e) A supplemental report of the audit should be furnished by telephone to the Disclosure Staff as soon as the results are known. It should be confirmed by memorandum to which is attached a copy of the audit report.

(f) Because of the extremely tight deadline in these cases, district offices are requested to make every effort to complete the audit within five workdays after receipt of the request. If this is not possible, a telephone or teletype report should be furnished to the Disclosure Staff indicating the approximate time when the audit will be completed.

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[From the Federal Register, Aug. 10, 1974]

EXHIBIT D

#### EXECUTIVE ORDER 11805

INSPECTION BY PRESIDENT AND CERTAIN DESIGNATED EMPLOYEES OF THE WHITE HOUSE  
OFFICE OF TAX RETURNS MADE UNDER THE INTERNAL REVENUE CODE OF 1954

By virtue of the authority vested in me as President of the United States, and in the interest of protecting the right of taxpayers to privacy and confidentiality regarding their tax affairs consistent with proper internal management of the Government, and in the further interest of maintaining the integrity of the self-

assessment system of Federal taxation, it is hereby ordered that any return, as defined in Section 301.6103(a)-1 of the Treasury Regulations on Procedure and Administration (26 CFR Part 301) as amended from time to time, made by a taxpayer in respect of any tax described in Section 301.6103(a)-1(a)(2) of such regulations shall be delivered to or open to inspection by the President only upon written request signed by the President personally.

Any such request for delivery or inspection shall be addressed to the Secretary of the Treasury or his delegate and shall state: (i) the name and address of the taxpayer whose return is to be inspected, (ii) the kind of return or returns which are to be inspected, and (iii) the taxable period or periods covered by such return or returns.

In any such request for delivery or inspection, the President may designate by name an employee or employees of the White House Office who are authorized on behalf of the President to receive any such return or make such inspection, provided that the President will not so designate an employee unless such employee is the holder of a Presidential commission whose annual rate of basic pay equals or exceeds the annual rate of basic pay prescribed by 5 U.S.C. 5316. No disclosure of such return, or any data contained therein or derived therefrom shall be made by such employee except to the President, without the written direction of the President.

All persons obtaining access to such return, or any data contained therein or derived therefrom shall in all respects be subject to the provisions of 26 U.S.C. 6103, as amended.

GERALD R. FORD.

THE WHITE HOUSE, *September 20, 1974.*

#### EXHIBIT E

DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
*Washington, D.C., September 20, 1974.*

HON. EDWARD M. KENNEDY,  
U.S. SENATE, *Washington, D.C.*

DEAR SENATOR KENNEDY: As you know, the Internal Revenue Code contains strict provisions limiting the disclosure of taxpayers' affairs except in certain specified situations. These provisions require the Internal Revenue Service to take particular care that inquiries about a taxpayer are either authorized by the taxpayer or come within the statutory and regulatory exceptions to the disclosure prohibitions.

Frequently, a taxpayer who feels that the IRS has not treated him or her properly will ask either his Congressman or Senator to look into the matter. This is a time-honored custom, and we believe that the elected officials in question perform a valuable function, both to the constituent and to the IRS, in ascertaining what the problem is and ensuring that the causes of the problem are dealt with as appropriate.

This function of elected officials can, however, conflict with the IRS' obligation to maintain the confidentiality of taxpayers' affairs. Thus, it is essential that IRS personnel be assured that a particular inquiry has been authorized by the taxpayer, and that our response is limited to only that information which the taxpayer consents to have disclosed.

In view of these competing considerations, the IRS earlier this year prepared an instruction sheet to all employees involved in responding to Congressional inquiries. A copy of these instructions is enclosed. As you can see from these instructions, it has been necessary to adopt rather rigid requirements of verification. We believe that the law and the taxpayers' basic right of privacy demand that we do no less. You may wish to bring these instructions to the attention of your staff personnel who are involved in this area.

I would, of course, certainly appreciate receiving any comments or suggestions you may have on this problem.

Sincerely,

DONALD C. ALEXANDER.

## EXHIBIT E

MAY 6, 1974.

Re Internal Revenue Service Manual Supplement No. 12G-88

Subject: Disclosure of tax information in answering congressional inquiries.

## SECTION 1. PURPOSE

The purpose of this Manual Supplement is to provide instructions concerning the disclosure of tax information in response to Congressional inquiries in the absence of a formal power of attorney from the taxpayer or the filing of a tax information authorization signed by the taxpayer. These instructions are intended to maintain the highest possible degree of privacy for taxpayers. They should not be construed in any way to inhibit a taxpayer's right to correspond with his elected representatives.

## SECTION 2. BACKGROUND

In some instances when a taxpayer communicates with a member of Congress about some action the Service has taken or failed to take with respect to his tax matters, he does not provide the member of Congress with a tax authorization signed by the taxpayer nor does he execute a formal power of attorney authorizing the member of Congress to obtain information about his tax matters. In such a situation, the Service takes the position that the taxpayer has made a limited waiver of the privilege of confidentiality with respect to his tax affairs, and there is no legal restriction preventing the Service from disclosing specific information required to place in proper context the matter on which the privilege has been waived. A taxpayer's waiver of privilege as to a portion of his tax affairs does not legalize or justify disclosure of all of his tax affairs. Indeed, the Service should limit its response to the factual situation presented by the taxpayer and disclose only that information required to do so.

## SECTION 3. GENERAL

A member of Congress, in his individual capacity, is entitled to only that information which is available to any person inquiring about the tax matters of a third party. The disclosure of tax information in most cases may be made only in accordance with 26 U.S.C. 6103 and 7213, corresponding provisions of the regulations in Part 301 on Procedure and Administration, 18 U.S.C. 1905, and 5 U.S.C. 552, and Manual instructions and Delegation Orders. The manner and extent to which such information may be furnished is contained in IRM 1272, Disclosure of Official Information Handbook; in Part 601, Statement of Procedural Rules; regulations 26 CFR 301.9000-1; and Delegation Orders No. S3 and S6 (revised). The requirements concerning tax information authorizations from taxpayers are in 26 CFR 601.502(c) (2), Conference and Practice Requirements. Generally, all of the aforementioned provide that tax return information submitted by the taxpayer and all information oral or written which the Service obtains in its investigation or examination of such returns are protected from disclosure except as provided by the law and regulations.

## SECTION 4. TELEPHONE INQUIRIES

Sometimes a member of Congress, or a member of his staff, will make a telephone inquiry on behalf of a taxpayer. In such a situation, the Service requires the member to send the taxpayer's correspondence, which then furnishes us with a clear understanding of the extent of the waiver of privilege. The Service will not disclose information absent such correspondence or, as an alternative, the Service will request permission of the member of Congress to deal directly with the taxpayer and provide disclosable feedback if requested.

## SECTION 5. CONGRESSIONAL INQUIRY ACCOMPANIED BY TAXPAYER'S CORRESPONDENCE

.01 If the member of Congress encloses with his letter an authorization or a request from his constituent asking him to secure information concerning the constituent's tax matters, it is permissible to furnish the member information about the specific matter disclosed by the taxpayer.

.02 In each case, judgment must be used in deciding how much information should be disclosed. For example:

1 If a constituent writes to a member complaining about some collection action taken by the Service, it is likely that the constituent does not intend for a full disclosure to be made of all his financial affairs as shown on income tax returns, or other records which he has furnished the Service. Our reply should deal as specifically as possible with the issues raised by the taxpayer and avoid information concerning the taxpayer's financial status or the amount of his unpaid liabilities. For example, if it is the case, the member may be told that there are unpaid taxes, that the taxpayer did not fulfill his agreement, and that after full consideration of the taxpayer's rights, enforced collection action became necessary. Information to counteract specific allegations about our collection actions may also be disclosed, if required to correct the record.

2 A similar type of response might be appropriate where the taxpayers complain about certain audit activity or subsequent assessments. In a case of this type, the member could be told, if it is the case:

- (a) how the taxpayer's legal rights had been observed;
- (b) of the required statutory notices sent to him;
- (c) that he either agreed to the assessment or did not avail himself of his appeal rights; and
- (d) under which section of the law the additional assessment was made.

#### SECTION 6. CONGRESSIONAL INQUIRY UNACCOMPANIED BY TAXPAYER'S CORRESPONDENCE

.01 If a member of Congress does not enclose with his letter an authorization or a request from his constituent asking him to secure information concerning the constituent's tax matters, the disclosure restrictions shown in Section 3 generally prohibit our providing such information. In such situations, it will be necessary to communicate with the member of Congress and ask that he provide you with a copy of the taxpayer's request. The member of Congress should be advised that it is necessary for the Service to have such information since the precise circumstances and extent of the taxpayer's waiver determine whether and to what extent the Service can or should disclose related information. An alternative approach should be to request permission of the member of Congress to deal directly with the taxpayer and provide disclosable feedback if requested.

.02 If the member of Congress does not provide a copy of the taxpayer's request, our response must necessarily be limited to avoid an unauthorized disclosure of tax information. We should, at a minimum, advise the member of Congress why a particular disclosure of tax information may not be made and the procedures concerning how the information may be obtained.

#### SECTION 7. CONGRESSIONAL INQUIRY INVOLVING COURT CASES

.01 If a member of Congress inquires about a pending court action (other than before the United States Tax Court) involving his constituent, such inquiry should be referred to Chief Counsel for reply or for reference to the Department of Justice for reply, or for coordination purposes.

.02 If a member of Congress inquires about a constituent's Tax Court case jointly under Commissioner and Chief Counsel jurisdiction, information in the "public record" (taxpayer's petition, statutory notice of deficiency, answer, reply, etc.) may be used or enclosed in response to such inquiry after coordination with Counsel.

.03 If a member of Congress inquires about a constituent's Tax Court case under the sole jurisdiction of Chief Counsel, such inquiry should be referred to Chief Counsel for reply.

#### SECTION 8. SPECIAL INSTRUCTIONS

In all disclosure decisions involved in responding to members of Congress and other similar requests, the particular fact situation must be carefully studied and the appropriate legal and policy considerations applied to determine how much information, if any, may be disclosed. While the Service desires to be responsive to members of Congress when they are acting on behalf of their constituents, the Service is governed by the law and regulations concerning the disclosure of tax information.



## SECTION 9. EFFECT ON OTHER DOCUMENTS

This information will be included in a new chapter (25)00, "Disclosure of Tax Information in Answering Congressional Inquiries", of IRM 1272, Disclosure of Official Information Handbook. This effect should be annotated by pen and ink in the Table of Contents following (24)50, with a reference to this Supplement.

DONALD C. ALEXANDER, *Commissioner*.

## EXHIBIT F

NOVEMBER 13, 1974.

RE: INTERNAL REVENUE SERVICE MANUAL SUPPLEMENT No. 48G-225.

Subject: Suspension of sensitive case reporting system.

## SECTION 1. PURPOSE

The Sensitive Case Reporting System has been suspended and will remain suspended until a modified and curtailed system has been developed and implemented. Pending development and implementation of a new Reporting System, field offices should keep appropriate management levels advised of matters significant to tax administration.

## SECTION 2. EFFECT ON OTHER DOCUMENTS

Section (12)30 of IRM 4810, Audit Reports Handbook; IRM 5132; Subsection 132 of IRM 5(17)00, IDRS Handbook; IRM 8(23)41 and IRM 9551 are amended and supplemented and should be so annotated by pen and ink with a reference to this Supplement.

DONALD C. ALEXANDER, *Commissioner*.

[From the Federal Register, Dec. 10, 1974]

## EXHIBIT G

## DEPARTMENT OF THE TREASURY—

## Internal Revenue Service

(26 CFR Part 601)

## STATEMENT OF PROCEDURAL RULES

PROPOSED PROCEDURAL RULES WITH RESPECT TO PUBLIC INSPECTION  
OF CERTAIN RULINGS AND DETERMINATION LETTERS

Notice is hereby given that the rules of procedure set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue. Prior to the final adoption of such rules, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue Service, Attention: CC:LR:T, Washington, D.C. 20224, by January 10, 1975. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed procedural rules should submit his request, in writing, to the Commissioner by January 10, 1975. In such case, a public hearing will be held, and notice of the time, place,

and date will be published in a subsequent issue of the **FEDERAL REGISTER**, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register.

DONALD C. ALEXANDER, *Commissioner*.

This document contains proposed amendments to the Statement of Procedural Rules (26 CFR Part 601). The proposed amendments relate to the public inspection of certain rulings and determination letters in order to implement the policy announced by the Internal Revenue Service in IR-1409, dated August 9, 1974, to open such material to public inspection. This document takes into account comments from interested parties which were solicited by IR-1409.

These proposed amendments authorize the prospective disclosure of certain rulings, determination letters, and, in certain cases, acknowledgements of withdrawal of requests for rulings or determination letters that are issued by the Internal Revenue Service. The rulings which are the subject of these proposed amendments include rulings necessitated by certain provisions of the Internal Revenue Code of 1954, such as, for example, sections 367, 442, and 446(e). However, the proposed amendments do not apply to such documents that are issued in the employee plan area or in response to an application for exemption under section 501(a) in order to allow the Internal Revenue Service to consider further the extent to which the procedures required by these proposed amendments should apply to such material. The proposed amendments also do not apply to earnings and profits determinations made pursuant to Rev. Proc. 65-10, 1965-1 C.B. 738.

In general, these proposed amendments provide for public inspection beginning approximately 30 days after the issuance of the ruling, determination letter, or acknowledgement of withdrawal of a request for a ruling or determination letter. Furthermore, in certain cases, a delay in public inspection may be granted for an additional period not to exceed 13 weeks.

The Internal Revenue Service will make available for public inspection the full text, including identifying information, of the documents authorized to be open to public inspection by these proposed amendments; however, these proposed amendments do provide procedures for protecting trade secrets and national defense or foreign policy secrets.

A new subparagraph (16), as added to § 601.201(e), sets forth additional instructions to persons requesting rulings or determination letters. Under these additional instructions, a request for a ruling or determination letter must also contain:

- (1) A waiver of confidential treatment,
- (2) If applicable, a declaration that certain information is a trade secret,
- (3) A declaration whether or not any matter is a national defense or foreign policy secret,
- (4) An affirmation under penalties of perjury,
- (5) A prominent indication, on the first page of the request, of each section of the Internal Revenue Code, related statute, or tax treaty to which the request relates, and
- (6) If desired, a request for delay of public inspection.

Pursuant to existing § 601.201(e) (8), any request for a ruling or determination letter that does not comply with these additional instructions, as well as those provisions already in § 601.201(e), will be acknowledged, and the requirements that have not been met will be pointed out.

A new subparagraph (17) (i), as added to § 601.201(e), describes the form and manner in which a waiver of confidential treatment must be made. Such a waiver is a blanket waiver, except for information that is contended to be a trade secret or national defense or foreign policy secret. Information is not a trade secret merely because it is commercial or financial information. Accordingly, commercial or financial information obtained from the person requesting the ruling or determination letter is not excluded from the waiver and will not be withheld from public inspection.

The Internal Revenue Service will withhold from public inspection and copying any material which it determines is a trade secret or national defense or foreign policy secret. The language of the declaration in § 601.201(e) (16) (iii) that is required for withholding national defense or foreign policy information is derived from Pub. L. 93-502 which amends the Freedom of Information Act (5 U.S.C. 552).

The proposed amendments would add a new subparagraph (17)(ii) to § 601.201(e) which would describe the manner for submitting a declaration that certain information is a trade secret or a declaration whether such request contains a national defense or foreign policy secret.

The proposed amendments would add a new subparagraph (18) to § 601.201(e) which would describe the form and manner in which an affirmation must be submitted.

The proposed amendments would add a new subparagraph (19) to § 601.201(e) which would describe the manner in which a request for delay in public inspection must be made and the standard the Internal Revenue Service will use in accepting or rejecting such a request.

The proposed amendments would add a new subparagraph (2) to § 601.201(j), relating to withdrawals of requests for rulings or determination letters, which would describe the consequences in the event of a withdrawal of such request because the Service rejects in whole or in part a declaration that certain information is a trade secret, a declaration whether such request contains national defense or foreign policy secrets, or a request for delay in public inspection.

The proposed amendments would revise paragraph (1) of § 601.201 to clarify the fact that a taxpayer may not rely upon, use, or cite as precedent any ruling issued to another taxpayer. (Pursuant to § 601.201(m), determination letters will be given the same effect as rulings described in § 601.201(l).) A new § 601.703(e), would put the public on notice of the provisions of § 601.201 (1) or (m) by providing for a statement to be placed by the Internal Revenue Service on each page of the material authorized by these proposed amendments to be open to public inspection.

The proposed amendments would add to § 601.702 a cross-reference to a new § 601.703.

New § 601.703 would provide rules with respect to public inspection of certain rulings, determination letters, and related documents.

Paragraph (b)(5)(ii) of the new section is "reserved" pending further consideration whether the index should be a cumulative index and how frequently the index should be cumulated.

Paragraph (c) of the new section described the place and procedure for public inspection and copying of all material authorized to be open to public inspection and copying by these amendments.

Paragraph (d) of the new section, relating to records retention, is "reserved". Further consideration is contemplated as to whether material authorized to be open to public inspection and copying by these proposed amendments should be retained or destroyed after a period of time and how long such period should be.

*Proposed Amendments to the Statement of Procedural Rules.* In order to provide rules with respect to public inspection and copying of rulings and determination letters, the following proposed amendments are made to the Statement of Procedural Rules (26 CFR Part 601) :

#### PART 601—STATEMENT OF PROCEDURAL RULES

Paragraph 1. Section 601.201 is amended by adding subparagraphs (16), (17), (18), and (19) at the end of paragraph (e) and by revising paragraph (j), the first sentence of paragraph (1)(1), paragraph (n)(2)(i), and the first sentence of paragraph (o)(2)(i). These added and revised provisions read as follows :

##### SECTION 601.201 RULINGS AND DETERMINATION LETTERS

(e) *Instructions to taxpayers.* \* \* \*

(16) A request for a ruling or determination letter to which § 601.703 would apply and which is filed with the Internal Revenue Service after the close of business on (the date this amendment is published in the FEDERAL REGISTER as a final document) must also contain—

(i) A waiver of confidential treatment in the manner described in paragraph (e) (17) (i) of this section.

(ii) If applicable, a declaration that certain information is a trade secret (as defined in § 601.703(b)(b)), submitted in the manner described in paragraph (e) (17) (ii) of this section.

(iii) A declaration, submitted in the manner described in paragraph (e) (17) (ii) of this section, stating either that no matter in the request or accompanying exhibits is, or that certain designated matter therein is, specifically author-

ized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is in fact classified pursuant to such Executive order,

(iv) An affirmation in the form and manner described in paragraph (e) (18) of this section.

(v) A prominent indication, on the first page of the request, of each section of the Internal Revenue Code, related statute, or tax treaty to which the request relates, or such other indication in such other manner as the Commissioner may from time to time require, and

(vi) If desired, a request for delay of public inspection in the manner described in paragraph (e) (19) of this section.

(17) (i) The waiver of confidential treatment referred to in paragraph (e) (16) (i) of this section shall be made by written statement in the request signed by or for the person making the request and all other persons whom the Internal Revenue Service shall determine may have a direct interest in maintaining the confidentiality of information in the request. The waiver shall state that each such person "expressly waives any right to confidential treatment with respect to the request, all information and correspondence in connection with the request, all information contained in the ruling, determination letter or acknowledgement of withdrawal issued, and all other materials included in the file connected with the request, the ruling, the determination letter or acknowledgement of withdrawal. The waiver may be made using words substantially similar to those in the preceding statement. A waiver of confidential treatment is not required—

(A) With respect to trade secrets or

(B) With respect to national defense or foreign policy information specifically authorized under criteria established by an Executive order to be kept secret.

A waiver may make reference to a declaration referred to in paragraph (e) (17) (ii) of this section.

(ii) The declaration referred to in paragraph (e) (16) (ii) or (iii) of this section shall be made in a separate document attached as an exhibit to the request for a ruling or determination letter. The declaration shall contain the information desired to be withheld from public inspection and include the reasons for the position that the information is the type which will be withheld from public inspection pursuant to § 601.703(b) (2) (i) or (ii). Such information shall not appear anywhere in the request for a ruling or determination letter or accompanying documents except in the declaration. The declaration shall refer specifically to the relevant portions of the request for a ruling or determination letter and shall describe fully how the information contained in the declaration is relevant to the request. Any obtainable corroborative evidence therefor, such as a letter from an appropriate government agency confirming that certain information is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive order, shall also be submitted. See paragraph (j) (2) of this section for applicable procedures in the event that either declaration is rejected.

(18) The affirmation referred to in paragraph (e) (16) (iv) of this section shall be set forth following the signature at the end of each request for a ruling or determination letter and any subsequent submission with respect thereto, shall be made by or for the person making the request under penalties of perjury, and shall be separately signed. The signed declaration must be in the following form:

Under the penalties of perjury I declare that I have examined the statement of facts presented in this request and in any accompanying exhibits and statements and, to the best of my knowledge and belief, they are true, correct, and complete.

In addition, if the request for the ruling or determination letter of subsequent submission with respect thereto is prepared by the authorized representative of the person making the request, such authorized representative shall submit a signed declaration under penalties of perjury stating that he prepared the request and accompanying documents or subsequent submission and to the best of his knowledge that the statement of facts contained therein is true, correct, and complete.

(19) The request for delay of public inspection referred to in paragraph (e) (16) (vi) of this section shall be made in a separate letter attached to the request for a ruling or determination letter. The request shall contain a statement

setting forth the reasons for requesting delay of public inspection. The burden will be on the person requesting the ruling or determination letter to establish clearly that the delay in public inspection will prevent serious harm to any person or is necessary to prevent a violation of law. Moreover, any delay of public inspection will be limited to the minimum period necessary under the circumstances. In no event shall the requested delay exceed 13 weeks in addition to the period for delay of public inspection provided by § 601.703(b) of approximately 30 days after the ruling, determination letter, or acknowledgement of withdrawal (described in paragraph (j) (1) of this section) is issued. If the Internal Revenue Service determines that the request for delay of public inspection is reasonable and adequately substantiated, the request will be granted and the person making the request will be so advised. See paragraph (j) (2) of this section for applicable procedures in the event that the request is rejected.

(j) *Withdrawals of requests.* (1) The taxpayer's request for a ruling or a determination letter may be withdrawn at any time prior to the signing of the letter of reply and the withdrawal will be acknowledged in writing. However, in such a case, in the discretion of the Internal Revenue Service, the letter acknowledging withdrawal with respect to a request for a ruling or determination letter filed with the Internal Revenue Service after the close of business on (the date this amendment is published in the FEDERAL REGISTER as a final document) may discuss the issues raised and the proposed response by the Service and the National Office may furnish its views to the district director whose office has or will have audit jurisdiction of the taxpayer's return. The information submitted will be considered by the district director in a subsequent audit or examination of the taxpayer's return. Even though a request is withdrawn, all correspondence and exhibits will be retained in the Service and may not be returned to the taxpayer. For rules as to public inspection of a letter of acknowledgement of withdrawal, see § 601.703. The provisions of paragraph (1) or (m) of this section shall apply with respect to not treating an acknowledgement of withdrawal as a precedent.

(2) A person's request for a ruling or determination letter may be withdrawn without the consequences specified in paragraph (j) (1) of this section if, as a result of a disagreement over the availability of certain material for public inspection under § 601.703(b), the Internal Revenue Service determines that it should reject in whole or in part either a person's declaration under paragraph (e) (17) (ii) of this section (that certain submitted information is a trade secret or a national defense or foreign policy secret) or such person's request for delay of public inspection under paragraph (e) (19) of this section. If the Service determines that such a declaration or request should be rejected in whole or in part, the person making such declaration or request will be notified in writing by the Service and will be considered to have withdrawn the request for a ruling or determination letter unless such person files with the Service a written acceptance of the rejection within 30 days (60 days if the person's mailing address is outside the United States) after the date of the Service's letter rejecting the declaration or request. If the request for a ruling or determination letter is withdrawn as a result of the rejection by the Service of a declaration described in paragraph (e) (17) (ii) of this section or of a request for delay in publication described in paragraph (e) (19) of this section, then notwithstanding the provisions of paragraph (j) (1) of this section no further response by the Service to the request for a ruling or determination letter will be sent or given and any information or correspondence received by the Service from the taxpayer or other persons submitting information will be returned. This subparagraph shall not apply to such a declaration or request for delay in publication that is submitted after the filing of the request for a ruling or determination letter except with respect to material submitted in such declaration or submitted with such request for delay in publication. For example, material submitted by a taxpayer in a declaration on March 10, 1975, with respect to a request for a ruling filed on February 12, 1975, will be returned to the taxpayer if the declaration is rejected and the taxpayer withdraws his request for the ruling. However, the material submitted on February 12, 1975, in the request for the ruling will be retained in the Service and will not be returned to the taxpayer, pursuant to paragraph (j) (1) of this section.

(1) *Effect of rulings.* (1) A taxpayer may not rely upon, use, or cite as precedent any ruling issued to another taxpayer. \* \* \*

(n) *Organizations claiming exemption under section 501 or 521 of the Code.* \* \* \*

(2) *Processing applications.* (i) Under the general procedures outlined in paragraphs (a) through (u) of this section, key district directors are authorized to issue determination letters involving applications for exemption under sections 501 and 521 of the Code. However, paragraphs (16) through (19) of paragraph (e) of this section shall not apply with respect to applications for exemption under section 501(a).

(o) *Employees' trusts or plans.* \* \* \*

(2) *Instructions to taxpayers.* (i) All of the provisions of paragraph (e) of this section are applicable to requests for determination letters of the type discussed in this paragraph, except that subparagraphs (16) through (19) of such paragraph (e) of this section shall not apply. \* \* \*

Par. 2. Section 601.702 is amended by redesignating paragraph (e) as paragraph (f) and by adding a new paragraph (e). The added and redesignated provisions read as follows:

#### SECTION 601.702 PUBLICATION AND PUBLIC INSPECTION

(e) *Certain rulings and determination letters.* For additional rules with respect to public inspection of certain rulings, determination letters, and related documents, see § 601.703.

(f) *Other disclosure provisions.* For procedures to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for certain internal revenue records or information the disclosure procedure for which is not covered by this section, see § 601.9000-1 of this chapter.

Par. 3. There is added immediately after § 601.702 the following new section:

#### SECTION 601.703 ADDITIONAL RULES WITH RESPECT TO PUBLIC INSPECTION OF CERTAIN RULINGS AND DETERMINATION LETTERS

(a) *Scope.* The provisions of this section shall apply with respect to rulings (within the meaning of §§ 601.201(a)(2) and 601.204(c)), determination letters (within the meaning of § 601.201(a)(3)), and acknowledgements of withdrawals (described in § 601.201(j)(1)), that were issued with respect to requests for rulings or determination letters filed with the Internal Revenue Service after the close of business on (the date this amendment is published in the FEDERAL REGISTER as a final document), other than rulings, determination letters, and acknowledgements of withdrawal issued either with respect to part I of subchapter D of chapter I of the Code (relating to pension, etc., plans) or in response to an application for exemption under section 501(a). See section 6104(a)(1)(B)(iv) for rules relating to the public inspection of certain letters or documents issued by the Internal Revenue Service and dealing with the qualification of a pension, profit sharing, or stock bonus plan or exempt status of any related trust or custodial account. This section does not apply to determinations of earnings and profits and of other items issued pursuant to Rev. Proc. 65-10, 1965-1 C.B. 738, as modified by Rev. Proc. 67-12, 1967-1 C.B. 589.

(b) *In general.* (1) Except as otherwise provided in this paragraph, the full text of all rulings, determination letters, acknowledgements of withdrawals (described in § 601.201(j)(1)) of requests for rulings and determination letters, and an index to the foregoing shall be available for public inspection and copying by any person, in accordance with paragraph (c) of this section, on or after the later of—

(i) The first regular working day in the first week beginning 30 days after issuance by the Internal Revenue Service of the ruling, determination letter, or acknowledgement of a withdrawal of a request for a ruling or determination letter, or

(ii) If, under § 601.201(e)(19), a delay in public inspection is granted for a period not to exceed 13 weeks after the day described in subdivision (i) of this subparagraph, the first regular working day in the first week after such period ends.

(2) Except as indicated in paragraph (b)(4) of this section, the Internal Revenue Service will withhold from public inspection and copying any material which the Internal Revenue Service determines is—

(i) A trade secret within the meaning of paragraph (b)(3) of this section, provided that the taxpayer referred to it in a declaration described in § 601.201(e)(17)(ii), or

(ii) A matter specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which is in fact properly classified pursuant to such Executive order.

(3) Whether any information is a trade secret is a question to be determined from the facts and circumstances of each particular case. However, for purposes of this section, a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing treating or preserving materials, a pattern for a machine or other device or a list of customers. The subject of a trade secret must be secret, that is, it must not be of public knowledge or of a general knowledge in the trade or business. Novelty, in the patent law sense, is not required for a trade secret. Information does not constitute a trade secret merely because it is commercial or financial information.

(4) A determination by the Internal Revenue Service that it will withhold from public inspection and copying material referred to in paragraph (b) (2) of this section is not binding on any third person or any court under section 552 of title 5 of the United States Code and notwithstanding such a determination such material may be required to be open to public inspection and copying pursuant to a proper request under that statute.

(5) (i) The index referred to in paragraph (b) (1) of this section shall be arranged by section of the Internal Revenue Code, related statute, or tax treaty or in such manner as the Commissioner may from time to time prescribe.

(ii) [Reserved]

(c) *Place of and procedures for public inspection and copying.* All material including the index available for public inspection and copying under paragraph (b) of this section will be available in the reading room of the National Office during regular office hours. The public inspection authorized by this section will be allowed only in the presence of an internal revenue officer or employee. The National Office will provide facilities whereby a person may obtain copies of the rulings, determination letters, or acknowledgements of withdrawal. Certification services with respect to such copies will also be provided. Fees will not be charged for the use of the materials authorized to be open to public inspection by this section, but the Commissioner may prescribe a reasonable fee for furnishing copies or certification of copies of the rulings, determination letters, or acknowledgements of withdrawal.

(d) *Records retention.* [Reserved.]

(e) *Ruling, determination letter, or acknowledgement of withdrawal not a precedent.* Each ruling, determination letter, and acknowledgement of a request to withdraw the request for the ruling or determination letter made available for public inspection and copying pursuant to paragraph (b) of this section is applicable only to the person to whom issued to the extent provided by § 601.201 (1) and (m) and may not be relied on, used, or cited as precedent in any other case by any person. Accordingly, each page thereof so made available will include the following statement:

This document is applicable only to the person to whom issued to the extent provided by § 601.201 (1) and (m) of the Statement of Procedural Rules. It may not be relied upon, used, or cited as a precedent in any other case by that person or any other person.

## EXHIBIT II

### MANUAL CHAPTERS AND HANDBOOKS—AVAILABLE IN THEIR ENTIRETY

- 0200—General Personnel Provisions: Personnel Management-Inspections-Program Evaluation-Reports-Records-and-Processing
- 0290.3—Payroll/Personnel System Users' Handbook
- 0300—Employment
- \*0332.14—College Recruiter's Handbook
- 0400—Employee Performance and Utilization
- \*0420.2—ACTS Training Programs Handbook
- \*0420.3—Compliance Training Programs Handbook

\*Denotes Handbook issued separately.

- \*0420.4—Servicewide Training Programs Handbook
- \*0420.6—Administration Training Programs Handbook
- \*0420.7—Taxpayer Service Training Programs Handbook
- \*0420.8—IRS Training Audio-Visual Handbook
- \*0420.9—Reporting Training and Obligating Funds Handbook
- \*0431—Supervisor's Guide to Performance Appraisal
- 0500—Position Classification, Pay and Allowances
- 0600—Attendance and Leave
- \*0601—Hours of Duty and Absence and Leave Handbook
- 0700—Personnel Relations and Services
- \*0735.1—Handbook of Employee Responsibilities and Conduct
- \*0771.1—Interim Handbook of Employee Adverse Actions & Grievances
- 0800—Insurance and Annuities
- 0900—General and Miscellaneous-Mobilization Readiness: Programs for Specific Positions
- 1100—Organization and Staffing
- \*1132—Administration Staffing Guides Handbook
- 1200—General Management
- \*1271—Organization Guide of the Internal Revenue Service
- \*1272—Disclosure of Official Information Handbook
- \*1274—Manpower Utilization and Control (Position Management)
- \*1275—Uniform Issue List
- \*1276—Equal Employment Opportunity Handbook
- \*1277—National Office List of Prime Issues
- \*1278—National Office Guidelines Handbook
- 1300—Personnel Management
- \*1341—Handbook of Position Classification and Qualification Standards and Guidelines
- 1400—Financial Management
- 1500—Budgeting
- \*1520—Financial Planning Handbook
- 1600—Financial Reporting
- \*1650—Fiscal Reports Handbook
- 1700—Administrative Accounting
- \*1716—Administrative Accounting Codes Handbook
- \*1717—Administrative Accounting Handbook
- \*1731—National Office Fiscal Management Handbook
- \*1763—Travel Handbook
- \*1771—Voucher Examination Handbook
- \*1783—Payroll System Users' Handbook
- \*1797—Time and Attendance Handbook
- \*179(14)—Timekeepers' Handbook
- 1800—Employment
- \*18(12)5—Identifying Supervisory Potential Handbook
- \*18(12)7—Technical's Career System Handbook
- 1900—Conditions of Employment
- 1(12)00—Training
- \*1(12)30—Management Training and Development Handbook
- \*1(12)82—Taxpayer Education Handbook
- \*1(12)(10)0—Handbook for Establishing and Operating IRS Training Centers
- 1(13)00—Statistical Reporting
- \*1(13)26.11—Statistical Processing Handbook for Individual Income Tax Returns-General Statistical Requirements
- \*1(13)26.12—Statistical Processing Handbook for Individual Income Tax Returns-Sample Management
- \*1(13)26.13—Statistical Processing Handbook for Individual Income Tax Returns-Data Collection and Classification
- \*1(13)26.21—Statistical Processing Handbook for Corporation Income Tax Returns-General Statistical Requirements
- \*1(13)26.22—Statistical Processing Handbook for Corporation Income Tax Returns-Sample Management
- \*1(13)26.23—Statistical Processing Handbook for Corporation Income Tax Returns-Data Collection and Classification

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\*Denotes Handbook issued separately.



- \*1(13)26.31—Statistical Processing Handbook for Partnership Returns of Income-General Statistical Requirements
- \*1(13)26.32—Statistical Processing Handbook for Partnership Returns of Income-Sample Management
- \*1(13)26.33—Statistical Processing Handbook for Partnership Returns of Income-Data Collection and Classification
- \*1(13)26.41—Statistical Processing Handbook for Fiduciary Income Tax Returns-General Statistical Requirements
- \*1(13)26.42—Statistical Processing Handbook for Fiduciary Income Tax Returns-Sample Management
- \*1(13)26.43—Statistical Processing Handbook for Fiduciary Income Tax Returns-Data Collection and Classification
- \*1(13)26.61—Statistical Processing Handbook for Estate Tax Returns-General Statistical Requirements
- \*1(13)26.62—Statistical Processing Handbook for Estate Tax Returns-Sample Management
- \*1(13)26.63—Statistical Processing Handbook for Estate Tax Returns-Data Collection and Classification
- 1(14)00—Administrative Services
- \*1(14)47.1—Motor Vehicle Management Handbook
- \*1(14)47.2—Motor Vehicle Operation and Maintenance Guide
- \*1(14)48—Internal Revenue Service Equipment Standards Handbook
- \*1(14)49—Personal Property Management Handbook
- \*1(14)50—Space Management Handbook
- 1(15)00—Record Administration
- \*1(15)29—Correspondence Handbook
- \*1(15)59—Records Disposition Handbook
- \*1(15)89—Mail Handbook
- 1(16)00—Safety; Physical and Document Security
- \*1(16)31—Classified Defense Information Handbook
- \*1(16)41—Physical and Document Security Handbook
- 1(17)00—Printing and Publication
- \*1(17)78—Forms Design Standards and Techniques Handbook
- 1(19)00—Public Information
- \*1(19)90—Information Techniques Handbook
- 1(20)00—Reports Management
- 1(21)00—Foreign Tax Assistance Program
- \*1(22)90—Training of Tax Officials and Personnel from Other Countries
- 1(20)00—Reports Management
- \*1(22)70—Taxpayer Service Toll-Free Systems and Walk-In Activities
- 4000—General
- 4100—Classification and Selection of Tax Returns, Claims, and Information Items
- \*4232—Audit Technique Guidelines Relating to Specialized Industries
- \*4234—Handbook for Tax Auditors
- \*428(11)—Handbook of Standard Explanations for Audit Report Writing System
- \*42(11)8—Handbook for Field Audit Case Managers
- 4300—Estate and Gift Tax Investigations
- \*4350—Audit Technique Handbook for Estate Tax Examiner
- 4400—Processing Income, Estate, and Gift Tax Cases After Examination
- \*4419—Handbook for Audit Reviewers
- \*45(10)5—Pension Trust Audit Guidelines
- 4600—Employment Tax Procedures
- 4700—Excise Tax Procedures
- 4800—Management, Reports and Regional Review
- \*4810—Audit Reports Handbook
- \*4830—Audit Clerical Activity Work Planning and Control System Handbook
- \*4841—Handbook for Office Audit Group Supervisors
- 4900—Miscellaneous
- \*4990—Audit Forms Catalog
- \*4(10)00—Handbook for Field Audit Group Supervisors
- \*4(11)00—Exempt Organizations Audit Procedures
- \*4(11)20—Exempt Organization Master File Handbook

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\*Denotes Handbook issued separately.

- \*4(12)10—Tax audit Guidelines-Individuals, Partnerships, Estates and Trusts, and Corporations
- \*4(12)40—Tax Audit Guidelines-Exempt Organizations
- 4(13)00—Audit Operations at Service Centers
- 5100—General Information
- \*5195—Revenue Officer Performance Analysis Handbook
- \*5196—DAR Group Supervisor Performance Analysis Handbook
- 5200—Collection Techniques
- 5300—Levy and Sale
- 5400—Federal Tax Liens
- 5500—100-Percent Penalty and Transferee Assessments
- 5600—Uncollectable Accounts
- 5700—Offers in Compromise
- 5800—Litigation and Summons Provisions
- \*58(10)0—Legal Reference Guide for Revenue Officers
- 5900—Insolvencies and Decedents Estates
- 5(10)00—Interest, Penalties and Limitations Provisions
- 5(11)00—Taxpayer Delinquency Investigations
- 5(12)00—Returns Compliance Programs
- 5(13)00—Other Investigations
- 5(14)00—Records and Reports
- \*5(14)(10)0—Collection Division Planning System Handbook—Division Staff and Office Branch
- \*5(14)(20)0—Collection Division Planning System Handbook—Field Branch
- 5(15)00—Taxpayer Service
- \*5(15)50—Taxpayer Service Representative Handbook
- 5(16)00—Office Branch Services
- 5(17)00—IDRS Handbook
- 5(18)00—Terminal Input Processing
- 6100—General Information
- 6700—Management Reports
- 6800—TSR Operating Techniques and Reporting
- 7100—Description of Part VII
- 8100—Manual System and Appellate Function
- 8200—Pre-90-Day and Protested Excise and Employment Tax
- 8300—90-Day Cases
- 8400—Docketed Cases
- 8500—Claim and Overassessment Cases
- 8600—Practice and Conference Procedure
- 8700—Settlement Practice and Procedure
- 8800—Appellate Division Agreement Forms
- 8900—Joint Committee Cases
- 8(10)00—Restricted Interest Computations
- 8(11)00—Definitions and Terms
- 8(12)00—Offers in Compromise
- 8(13)00—Final Closing Agreements
- \*8(13)10—Closing Agreement Handbook
- 8(14)00—Rulings and Requests for Technical Information
- 8(15)00—Cases Involving Criminal Prosecution
- 8(16)00—Transfer of Case Files and Settlement Jurisdiction
- 8(17)00—Civil Cases Involving the Department of Justice
- 8(18)00—Bankruptcy and Receivership Cases
- 8(19)00—Transferee Liability and Jeopardy Assessments
- 8(20)00—Action Memoranda
- 8(21)00—Supporting Statements
- 8(22)00—Case Processing and Control
- 8(23)00—Records and Reports
- \*8(23)50—Appellate Division Records and Reports Handbook
- 8(24)00—Technical and Procedural Guidelines
- \*8(24)40—Appellate Division Supervisors' Guide
- \*8(24)50—Appellate Division Audit Section Handbook
- \*8(24)60—Appellate Division Secretarial Handbook
- 9100—Introduction

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\*Denotes Handbook issued separately.

9200—Types of Investigations  
 9300—Investigative Procedures  
 9400—Special Enforcement Procedures  
 9500—Reports  
 \*9570—Case Management and Time Reporting System Handbook  
 9600—Technical Assistance and Processing of Cases After Investigation  
 9700—Miscellaneous  
 (10)100—General  
 (10)200—Internal Audit  
 (10)300—Security, Character, and Other Background Investigations  
 (10)400—Conduct Investigations  
 (10)500—Other Investigations  
 (11)000—Introduction to Part XI, IRM  
 (11)100—Authorities and Standards  
 (11)200—General Administration  
 \* (11)230—Technical's Workload Control and Reporting System Handbook  
 (11)300—Regulations and Legislation  
 (11)500—Technical Study Projects  
 (11)600—Rulings, Determination Letters, Opinion Letters, Information Letters  
     and Closing Agreements Covering Specific Matters  
 \* (11)671—Exempt Organizations Handbook  
 \* (11)672—Private Foundations Handbook  
 (11)700—Technical Advice  
 (11)800—Assistance to Other Offices  
 (11)900—Revenue Rulings and Revenue Procedures  
 (11) (10)00—Technical Publications Program  
 (11) (11)00—Other Technical Programs and Services  
 ADP Handbook 1—Implementation and Administration

#### MANUAL CHAPTERS AND HANDBOOKS—AVAILABLE WITH EXCEPTIONS

\*1218—Policies of the Internal Revenue Service Handbook  
 4200—Income Tax Investigations  
 \*4231—Audit Technique Handbook for Internal Revenue Agents  
 \*4235—Techniques Handbook for In-Depth Audit Investigations  
 4500—Collateral Income, Estate, and Gift Tax Procedure  
 \*4(12)20—Tax Audit Guidelines and Techniques for Tax Technicians  
 \*9900—Handbook for Special Agents  
 ADP Handbook 3—Service Center and Computer Center Operations-Detailed  
 \* (10)111—Instructional Handbook for Inspectors of the Internal Security  
     Division

#### EXCEPTIONS TO IRM CHAPTERS AND HANDBOOKS

\*1218—Policy statements containing tolerances and case selection criteria  
 4200—A portion containing tolerance and investigative techniques  
 \*4231—Portions containing investigative techniques and selection criteria  
 \*4235—Portions containing selection criteria and investigative techniques  
 4500—Portions containing tolerances and selection criteria  
 \*4(12)20—Portions containing investigative techniques and selection criteria  
 \*9900—Portions containing investigative techniques and selection criteria  
 \* (10)111—Portions containing investigative techniques, tolerances, and case  
     selection criteria  
 ADP Handbook 3—Portions containing interest and penalty tolerances, returns  
     processing techniques, and criteria for maintenance of tax  
     account files.

#### LAW ENFORCEMENT MANUALS, MANUAL CHAPTERS AND HANDBOOKS—WITHHELD AS EXEMPT UNDER THE FOIA

Law Enforcement Manuals I, V, and IX  
 Law Enforcement Manual ADP 3  
 \*4960—Audit Tolerance and Criteria Handbook  
 \*9180—Intelligence Tolerance and Criteria Handbook

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\*Denotes Handbook issued separately.

## EXHIBIT I

## 1260: ADMINISTRATIVE CLASSIFICATION OF OFFICIAL PUBLICATIONS AND DOCUMENTS INTENDED FOR INTERNAL USE

1261: *Scope*.—(1) This sections sets forth the authority and guidelines for administrative classification of official publications and documents intended for internal use.

(2) The authority and guidelines for disclosing the contents of and furnishing official publications to persons outside the Department of the Treasury are set forth in IRM 1240.

1262: *Authority for Administrative Classification*.—(1) Treasury Department Order No. 222 provides authority for the administrative classification of certain non-defense official information which requires confidential handling and which is not subject to classification safeguards or dissemination restrictions imposed by law or by Executive Order No. 10501 (as amended), titled, Safeguarding Official Information in the Interest of the Defense of the United States.

(2) The authority for administrative classification contained in the Treasury Order pertains to all documents, reports, memorandums and publications intended for internal use containing information of the types specified in the Order. However, only publications intended for internal use (see IRM 1240 for examples) and documents addressed to officials of the Department of the Treasury for signature by the Commissioner or Deputy Commissioner will be subject to administrative classification. The limited distribution of other documents, reports of investigation, memorandums and correspondence, and the normal safeguarding of Service files to prevent unauthorized disclosures, make administrative classification unnecessary.

1263: *Classification Categories*.—(1) Publications intended for internal use and documents addressed to officials of the Department of the Treasury for signature by the Commissioner or Deputy Commissioner containing non-defense information or material of an important, delicate, or sensitive nature which should be treated confidentially and restricted to the officials and their immediate subordinates who need to know such information, shall have "Limited Official Use" imprinted on the bottom of each page. Publications and documents so marked shall be handled and transmitted in a manner equivalent to that prescribed for "Confidential" defense information in Executive Order 10501. It is not required, however, that persons permitted access to "Limited Official Use" information have a "Confidential" defense information clearance.

(2) Publications intended for internal use containing non-defense information or materials which should be safeguarded but to a lesser degree than "Limited Official Use," and which have wider distribution than "Limited Official Use," shall have "Official Use Only" imprinted on the bottom of each page. Publications so marked shall be restricted to official use and handled or transmitted in a manner which will not make them available to persons outside the Department of the Treasury except as provided in IRM 1240.

1264: *Authority to Administratively Classify Publications and Documents*.—

(1) Publications and documents shall be classified for "Limited Official Use" be the Commissioner or Deputy Commissioner.

(2) In the National Office, publications shall be classified for "Official Use Only" by the Commissioner; the Deputy Commissioner; Assistant Commissioners; Assistant to the Commissioner (Public Affairs); Director Tax Administration Advisory Staff; Division Directors; Assistant and Associate Division Directors; the Director of International Operations; and the Chief, Disclosure Staff, as provided for in Delegation Order No. 89 (as revised), in accordance with the guidelines set forth in IRM 1265.

(3) In the Regions, Districts and Service Centers, publications shall be classified for "Official Use Only" by Regional Commissioners; Regional Inspectors; Assistant Regional Commissioners; District Directors; Service Center Directors; Director, IRS Data Center; and Director, National Computer Center, as provided for in Delegation Order No. 89 (as revised), in accordance with the guidelines set forth in IRM 1265.

(4) The authority to declassify publications classified under Delegation Order No. 89 (as revised) may be exercised by the official authorizing the original

classification, a successor in that capacity, or a line supervisory official of either. Classification and declassification authorities may not be redelegated.

(5) The originator of a publication or document of the type subject to administrative classification under the provisions of IRM 1262:(2) has the responsibility for recommending the administrative classification, if any, in accordance with the guidelines set forth in IRM 1265.

#### 1265: GUIDELINES FOR ADMINISTRATIVE CLASSIFICATION

**1265.1: Internal Management Documents.**—(1) Internal management documents (see IRM 1230) constitute specific categories of publications issued by the National Office, Regions, Districts, and Service Centers. Officials authorized to issue internal management documents will observe the following guidelines:

(a) The wide distribution necessary for internal management documents makes it impracticable to afford them the security handling required for "Limited Official Use." Therefore, internal management documents should never contain information requiring an administrative classification higher than "Official Use Only."

(b) All Policy Statements will be classified "Official Use Only."

(c) Only those Manual Supplements issued to "Official Use Only" classified Internal Revenue Manual Handbooks will be classified "Official Use Only."

(d) The basic text and Handbooks of the IR Manual will be classified "Official Use Only," with the exception of Part Zero, Part VI, Chapter 1100 and those Chapters and Handbooks specifically declassified by Manual Transmittals. (Chapters or Handbooks for which a Manual Transmittal has been issued making the material available to the public are *not* classified "Official Use Only" even though some of the pages still carry that classification.)

(e) Information Notices will be classified "Official Use Only" only if they contain material the same as, or similar to, that contained in the IR Manual and ADP Handbook material classified "Official Use Only."

(f) Delegation Orders, including the separate series of RC—, DIR—, SC—, and IO—Delegation Orders authorized by IRM 1230, will not be classified.

(g) RC—, DIR—, SC—, and IO—Memorandums and Circulars will be classified "Official Use Only" only if they contain material the same as, or similar to, that contained in the IR Manual and ADP Handbook material classified "Official Use Only."

(h) The series of ADP Handbooks will be classified "Official Use Only," with the exception of those specifically declassified by ADP Handbook Transmittals. (Handbooks, Chapters or Issuances for which a Transmittal has been used making the material available to the public are *not* classified "Official Use Only" even though some of the pages still carry that classification.)

(i) Only those ADP Handbook Supplements issued solely to "Official Use Only" classified ADP Handbooks will be classified "Official Use Only."

**1265.2: Other Internal-Use Publications.**—Internal-use publications other than internal management documents, containing information which should not be disclosed outside the Department of the Treasury, shall be classified "Official Use Only" unless the classification "Limited Official Use" is believed necessary by the issuing official. In that event, the proposed publication will be forwarded through normal supervisory channels to the Deputy Commissioner, with a memorandum explaining the reasons for requesting the higher classification.

**1266: Preparation of Internal-Use Publications for Printing or Reproduction.**—(1) Proposed internal-use publications intended for printing or reproduction without retyping will show the administrative classification, if any, on each page of the publication.

(2) Proposed internal-use publications requiring retyping as part of the printing or reproduction process will show the administrative classification, if any, on the first page of the publication. The classification will be carried forward to each page of the publication in the printing or reproduction process.

**1267: Effect of Prior Classification, "For Official IRS Use Only," on Existing Publications.**—This classification on existing publications shall be considered to have the same effect as "Official Use Only." Upon revision or reprinting, "For Official IRS Use Only" shall be deleted and consideration given to proper administrative classification in accordance with the requirements of this Section.

## EXHIBIT J

## DOCUMENTS REQUESTED BY THE LONGS

Appellate Statistical Reports, NO-CP:AP-Table 57, Receipts, Disposals and Inventory of Docketed Work Units by Dollar Category  
 Staffing Analysis Report, Document 5203  
 Quarterly Statistical Report, Section 2, Accounts and Data Processing, Document 5395  
 Management Information Report, Source of Returns—Income Taxes, Document 5342 for 1972 and thereafter  
 Summary of Audit and Jeopardy Assessments, NO-CP:A-341  
 Manpower Utilization Report, NO-ACTS:C-100  
 Forms 3243 and 3243-A approved by the National Office covering Fiscal Year 1973  
 Audit Technical Time Tables (G-Series), NO-CP:A-127  
 Audit Technical Time Report, NO-CP:A-170  
 Report on Referrals and Coordinated Examinations, NO-CP:A-137  
 Report on Large Deficiency and Over-assessment Cases of \$100,000 and over, NO-CP:A-114  
 Audit Statistical Report Accomplishments, NO-CP:A-233  
 Source of Returns, NO-CP:A-251  
 DIF Classification Activity Monthly Report, NO-CP:A-223  
 Collection Division Box Schole Analysis, NO-ACTS:PRA-95, NO-CP:C-95 and Form M-5507 (all the same form)  
 Taxpayer Assistance (Based on TCMP, Phase III, Cycle 1) 1963 Individual Income Tax Returns Filed in 1964, Document 6007  
 TCMP, Delinquent Returns Survey 1969, Document 6624  
 Audit Production Reports, Chapter 500 of IRS 4810, Audit Reports Handbook  
 Offers in Compromise Activity, Document 6035  
 Tables D-1 through D-6, Additional Tax and Penalties in Examined Returns Disposed of by District Audit Divisions Contained in Audit Quarterly Statistical Report  
 Taxpayer Delinquent Accounts, Document 5512  
 2200 Activity-Work Planning and Control System Data, Performance Reports, Form 3469—Document 5294  
 Audit Statistical Reports—District Conference Activity, NO-CP:A-68, Table 1  
 Regional Fiscal 1973 Tables, Plan vs. Accomplishment, NO-CP:A-231  
 Appellate Statistical Reports, NO-CP:AP-19, Table 1, Appellate Division Non-docketed Receipts, Disposals and Inventory  
 Appellate Statistical Reports, NO-CP:AP-19, Table 10, Receipts, Disposals and Inventory of Non-docketed Work Units by Dollar Category  
 Appellate Statistical Reports, NO-CP:AP-29, Table 30, Appellate Division Docketed Receipts, Disposals and Inventory

[From the Federal Register, Jan. 16, 1975]

## EXHIBIT K

UNIFORM SCHEDULE OF FEES FOR SEARCH AND DUPLICATION OF RECORDS  
 REQUESTED UNDER THE FREEDOM OF INFORMATION ACT

## DISCLOSURE OF RECORDS

(31 CFR Part 1)

## UNIFORM FEE SCHEDULE

Notice is hereby given in accordance with 5 U.S.C. 553 that, pursuant to 5 U.S.C. 552(a)(4)(A) (as added by Pub. L. 93-502), the Department of the Treasury proposes to adopt the following amendments to its rules regarding disclosure of records in order to adopt a uniform schedule applicable to all constituent units of the Department covering the fees for search and duplication of records requested under 5 U.S.C. 552, the Freedom of Information Act. Prior to the final adoption of such rules, consideration shall be given to any comments pertaining thereto which are submitted in writing to Richard R. Albrecht, General Counsel, Room 3000, Department of the Treasury, 15th Street and Pennsylvania Avenue

NW., Washington, D.C. 20220 and received on or before February 18. Pursuant to 31 CFR 1.4(b), 36 FR 13835, comments submitted in response to this notice of proposed rule making are available to the public upon request therefor unless confidential status for the submission has been requested and approved.

It is recognized that the fee schedule herein proposed may not provide for full recovery of the direct cost of search and duplication. Notice is, therefore, also given that if experience over a reasonable period so indicates, the fee schedule herein proposed may be revised to provide for such recovery as more closely approximate costs.

Further, notice is given that, on or before February 19, 1975, this Part 1 will be amended to comport with the requirements of Pub. L. 93-502 and, in such connection, will be made uniformly applicable to all constituent units of the Department of the Treasury.

Subject to the receipt of comments, it is proposed that 31 CFR Part 1, § 1.6 be deleted and that the following be substituted therefor:

#### § 1.6 FEES FOR SERVICES

(a) *In General.* (1) This fee schedule is applicable uniformly to all constituent units of the Department and supersedes fee schedules heretofore published by any constituent unit of the Department. The fees indicated are to be charged only for search and duplication and under no circumstances will a fee be charged for determining whether an exemption can or should be asserted, deleting exempt matter being withheld from records to be furnished, or monitoring a requestor's inspection of agency records made available in this manner.

(2) While certain relevant publications which are available for sale through the Government Printing Office will be placed on the shelves of the reading rooms, such publications will not be available for sale there. Persons desiring to purchase such publications should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, copies of pages of such publications on the reading room shelves may be obtained at the reading rooms in accordance with the schedule of fees set forth in this section.

(b) *When charged.* (1) Unless performed without charge, waived or reduced in accordance with paragraphs (c) or (d) of this section, fees shall be charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records.

(2) The fees may be waived or reduced at the discretion of the official who determines the availability of records, when the record is not located for any reason or when it is determined to be exempt from disclosure.

(c) *Services performed without charge.* (1) No charge shall be made for providing records to Federal, state or foreign governments, international governmental organizations, or local governmental agencies or offices thereof submitting requests in their official capacities.

(2) The heads of offices and bureaus are authorized to determine in accordance with 5 U.S.C. 553 which classes of records under their control may be provided to the public without charge, or at a reduced charge.

(d) *Waiver or reduction of fees.* (1) Fees may be waived or reduced in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by such official when he determines that:

(i) The records are being requested by, or on behalf of, an individual who demonstrates in writing under penalty of perjury that he is indigent and compliance with the request does not constitute an unreasonable burden on the constituent unit of the Department; or

(ii) The person making the request has demonstrated in a written statement that waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public.

(2) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in (1) above by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to such official within thirty days of the denial of the initial request for waiver or reduction and shall be decided promptly.

(e) *Avoidance of unexpected fees.* In order to protect the requestor from unexpected fees, all requests for records shall contain an amount which the requestor has set as an acceptable upper limit to cover the cost of processing the

request. When the costs estimated by the constituent unit of the Department for processing the request exceed that limit or when the requestor or has failed to state a limit and the costs are estimated to exceed \$50.00, and the relevant constituent unit has not been determined to waive or reduce the fees, a notice shall be sent to the requestor. This notice shall :

- (1) Inform the requestor of the estimated costs ;
- (2) Extend an offer to the requestor to confer with personnel of the relevant constituent unit of the Department in an attempt to reformulate the request in a manner that will reduce the fees and still meet the needs of the requestor ; and
- (3) Inform the requestor that the running of the time period, in which the relevant constituent unit of the Department is obliged to make a determination on the request, has been tolled pending a reformulation of the request or receipt of an agreement from the requestor to bear the estimated costs.

(f) *Form of payment.* (1) Payment shall be made by check or money order payable to the order of the Treasury of the United States or the relevant constituent unit of the Department.

(2) When the estimated costs exceed \$50.00, the relevant constituent unit of the Department shall require the requestor to enter into a contract for the payment of actual costs, which contract may provide for prepayment of the estimated costs.

(g) *Amounts to be charged for specified services.* The fees for services performed by the relevant constituent unit of the Department shall be imposed and collected as set forth in this paragraph. Should services other than those described be requested and rendered, appropriate fees shall be established by the head of the relevant constituent unit of the Department, or his delegate, and such fees shall be imposed and collected pursuant to 31 U.S.C. 483a, but subject to the constraints imposed by 5 U.S.C. 552(a) (4) (A).

(1) Duplication.

(i) Photocopies :	<i>Each</i>
Per page up to 8½" x 14"-----	\$0. 10
U.S. Savings Bond-----	0. 50
Marketable security-----	1. 50
Additional copies-----	0. 75
(ii) Photographs, films and other materials—actual cost.	

The constituent unit of the Department may furnish the records to be released to a private contractor for copying and will charge the person requesting the records the actual cost of duplication charged by the private contractor. No fee will be charged where the requestor furnishes the supplies and equipment and makes the copies at the government location.

(2) Unpriced printed materials. Otherwise unpriced printed material, which is available at the location where requested and which does not require duplication in order that copies may be furnished, will be provided at the rate of \$0.25 for each twenty-five pages or fraction thereof.

(3) Search Services.

(i) The fee charged for services of personnel involved in locating records shall be \$3.50 for each hour or fraction thereof.

(ii) Where, because of the nature of the records sought and the manner in which such records are stored, a computer search is required, the fee shall be \$3.50 for each hour (or fraction thereof) of personnel time associated with the search plus an amount which reflects the actual costs of extracting the stored information in the format in which it is normally produced, based on computer time and supplies necessary to comply with the request.

(4) Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

STEPHEN S. GARDNER,  
*Deputy Secretary of the Treasury.*



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